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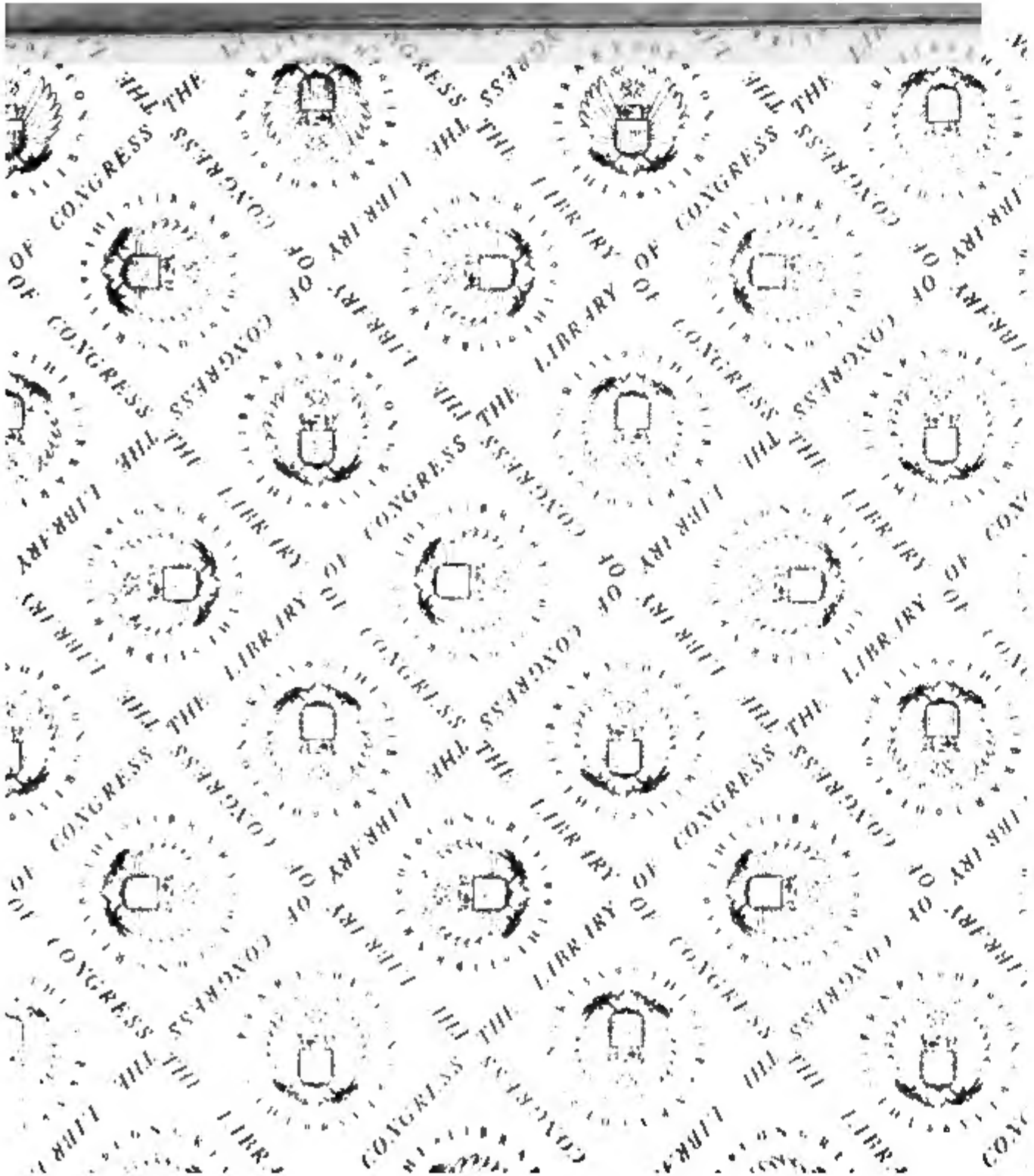
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COMMITTEE ON INTERSTATE COMMERCE,

UNITED STATES SENATE,

IN SPECIAL SESSION,

PURSUANT TO SENATE RESOLUTION No. 288,

FIFTY EIGHTH CONGRESS, THIRD SESSION.

MAY 12, 1905 MAY 27, 1905.

VOLUME IV.

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REGULATION OF RAILWAY RATES.

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HEARINGS

BEFORE THE

U.S. Congress

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MAY 18, 1905–MAY 23, 1905.

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WITH CONSOLIDATED INDEX OF VOLUMES I TO V

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1905.

INTERSTATE COMMERCE COMMITTEE.

SENATE OF THE UNITED STATES.

STEPHEN B. ELKINS, of West Virginia, *Chairman.*
SHELBY M. CULLOM, of Illinois.
NELSON W. ALDRICH, of Rhode Island.
JOHN KEAN, of New Jersey.
JONATHAN P. DOLLIVER, of Iowa.
JOSEPH B. FORAKER, of Ohio.
MOSES E. CLAPP, of Minnesota.
JOSEPH H. MILLARD, of Nebraska.
BENJAMIN R. TILLMAN, of South Carolina.
ANSELM J. McLAURIN, of Mississippi.
EDWARD W. CARMACK, of Tennessee.
MURPHY J. FOSTER, of Louisiana.
FRANCIS G. NEWLANDS, of Nevada.

COLIN H. LIVINGSTONE,
Clerk to Committee.

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REGULATION OF RAILWAY RATES.

HEARINGS BEFORE THE COMMITTEE ON INTERSTATE COMMERCE, UNITED STATES SENATE.

THURSDAY, *May 18, 1905.*

Committee met pursuant to adjournment.

Present: Senators Elkins (chairman), Cullom, Kean, Dolliver, Clapp, and Newlands.

The chairman stated that he had received a message from Senator Foraker to the effect that he will be unable to be present to-day, as he is confined to his home by illness.

STATEMENT OF MR. CHARLES R. SMITH.

Senator KEAN. Please state your name, residence, and occupation.

Mr. SMITH. My name is Charles R. Smith; Menosha, Wis.; I am a manufacturer of wooden ware.

Senator KEAN. What is the extent of your business?

Mr. SMITH. I looked it up a few days before I left, and I found that we have paid freight to the amount of $175,000 per year.

Senator KEAN. What roads?

Mr. SMITH. The Chicago and Northwestern, the Wisconsin Central, and the Chicago, Milwaukee and St. Paul.

Senator KEAN. You may make such statement as you wish.

Mr. SMITH. We are perfectly satisfied, so far as shippers are concerned, with the interstate-commerce law as it is; it is all right.

Senator KEAN. You have no complaint to make?

Mr. SMITH. We have already made a complaint against the Commission; have one now pending.

Senator KEAN. What is the complaint?

Mr. SMITH. It was to get a rate on wooden ware west bound the same as given from Pacific terminals east bound.

Senator KEAN. You have made that complaint to the Commission. Do you think you are going to get the remedy you want in that direction?

Mr. SMITH. Yes, sir; we are perfectly satisfied, after looking up the matter thoroughly.

Senator KEAN. You will be perfectly satisfied whatever their decision may be?

Mr. SMITH. If it is not decided in our favor we will appeal the case to the circuit court.

Senator KEAN. Do you know anything about rebates at present?

Mr. SMITH. Nothing whatever.

Senator KEAN. Did you ever receive any rebate?
Mr. SMITH. Yes, sir; before the interstate-commerce law went int effect.
Senator KEAN. Is there anything else you desire to state?
Mr. SMITH. I will answer any questions that you like to ask, if can.
Senator KEAN. If there is anything you desire to say we should b glad to have it.
Mr. SMITH. If the present law is enforced it is adequate, so fa as discriminations are concerned. If the rate-making power is give to the Interstate Commerce Commission it might do away with th advantages of location. If the Commission had the power to mak rates, the commercial relations of the country would be disturbed because every locality would be clamoring for better rates. Th making of rates is now brought about mainly by competition betwee railroads and localities. If the rates could be named by the Com mission this competition would be largely eliminated.
Senator KEAN. Is the view you have expressed the view of ship pers generally in your part of the country?
Mr. SMITH. I think it is; especially in Wisconsin, where th present governor is now agitating legislation.
Senator KEAN. You dread a fixed rate to be made by the Interstat Commerce Commission?
Mr. SMITH. Yes, sir.
Senator KEAN. You think it would interfere with your business?
Mr. SMITH. I think it would interfere very largely with busines in general.
Senator KEAN. You prefer that the railroads should be the origi nators of the rates?
Mr. SMITH. Yes, sir.
Senator KEAN. And continue?
Mr. SMITH. And continue to do so.

STATEMENT OF MR. B. B. SHAFFIELD.

Senator KEAN. Please state your name and residence.
Mr. SHAFFIELD. My name is B. B. Shaffield; Faribault, Minn.
Senator KEAN. What is your business?
Mr. SHAFFIELD. Milling and elevator business.
Senator KEAN. What have you to say as to the extent of you business?
Mr. SHAFFIELD. We handle about 5,000,000 bushels of whea yearly—grinding about that quantity.
Senator KEAN. Five million bushels is a large quantity.
Mr. SHAFFIELD. Yes, sir.
Senator KEAN. Over what roads do you ship?
Mr. SHAFFIELD. Over the Milwaukee and St. Paul, the Rock Island and the Great Western.
Senator KEAN. What have you to say as to rates?
Mr. SHAFFIELD. I have yet to see a miller who wishes any change any more than to thoroughly enforce the laws now in force.
Senator KEAN. You are satisfied with the interstate-commerce law as it exists?
Mr. SHAFFIELD. Yes, sir.

Senator KEAN. Have you made any complaint to the Interstate Commerce Commission?

Mr. SHAFFIELD. No, sir.

Senator KEAN. You have had no occasion to do so?

Mr. SHAFFIELD. No, sir; the rates on flour, we believe, are about as reasonable as can be made. The present rate from Minneapolis to New York or from Faribault—which is the same thing—is 19½ cents, 7½ cents of which is from Minneapolis or Faribault to Chicago. We consider that a very low rate.

As representing one of the outside millers, I might say that the outside millers are getting full protection as compared with those centrally located in the large milling groups, for instance.

Senator KEAN. What is the rate to Liverpool?

Mr. SHAFFIELD. The rate to Liverpool at the present time is about 21 or 22 cents, depending on the ocean rate from Minneapolis to Liverpool.

Senator KEAN. You do not belong to any trusts or combinations?

Mr. SHAFFIELD. No, sir.

Senator KEAN. Do you receive any rebates?

Mr. SHAFFIELD. Not since the interstate-commerce law was enacted.

Senator KEAN. You are satisfied with the present conditions, and would rather have the railroads fix the rate than the Interstate Commerce Commission?

Mr. SHAFFIELD. We believe the rate-making power should be left in the hands of the railroads.

Senator KEAN. What is the general opinion among the shippers in your part of the country?

Mr. SHAFFIELD. As I say, I have yet to talk with any one in the milling business—and I have talked with a great many—who wants to see the rate-making power fixed in the hands of the Commission.

Senator KEAN. How about people in other business?

Mr. SHAFFIELD. I think, as a rule, shippers are opposed to fixing the rate-making power in the hands of the Commission. I think there might be possible exceptions to that, but very few.

Senator KEAN. What reasons do they give for that opposition to placing the rate-making power in the hands of the Commission?

Mr. SHAFFIELD. They believe that, under the present arrangement, they can get quicker action; that in case of emergencies they can get attended to more promptly than they could be by the Commission, and such emergencies are constantly arising. I might instance a case in my own business three or four years ago. The wheat supply was partly exhausted in the Northwest during the months of July and August. I went to the Great Western and laid our position before them, and they gave us a milling-and-transit rate of 12½ cents a hundred from Kansas City via Faribault down to Chicago. You realize that that is a very low rate. By going to the railroad and explaining the case they could see it instantly, whereas, if we had had to take that case before the Commission we could not have got action of any sort until the trouble had gone by.

Senator KEAN. Evidently the railroads thought it was to their interest to keep the mills in your part of the country going, and so they gave you a rate by which you could still keep your mills running.

Mr. SHAFFIELD. It is the present policy of the railroads in the Northwest to encourage manufacturers along their own lines of road,

so as to avoid the centralizing of industries. One thing that brings this about largely is the milling-and-transit arrangement, which we are afraid we might lose under such a body as the Interstate Commerce Commission.

Senator KEAN. You think that if the Interstate Commerce Commission had the power to fix rates it would tend to centralize the milling industry?

Mr. SHAFFIELD. I think it would be centralized to a greater extent than it now is. The Interstate Commerce Commission have already decided that it is proper to allow a rate of 2 cents a hundred less on wheat than on flour. That would be very detrimental to the interest of our country, as anybody may see. It would build up our competitor across the water and cripple the man on this side. This, I may say, has been only in the last two or three years. The railroads made the same rate on flour as on wheat.

Senator KEAN. Notwithstanding the decision of the Commission?

Mr. SHAFFIELD. Notwithstanding the decision of the Commissioners, who said that the railroads would be allowed to make a rate of 2 cents a hundred lower on wheat than on flour.

Senator KEAN. You are satisfied with the existing conditions?

Mr. SHAFFIELD. Yes, sir.

Senator KEAN. You are doing a prosperous business?

Mr. SHAFFIELD. Well, that would be a leading question.

Senator KEAN. Have you anything further to say?

Mr. SHAFFIELD. I do not think of anything further.

Senator KEAN. We are much obliged to you.

STATEMENT OF MR. HERBERT BRADLEY.

Senator KEAN. You may state your name and occupation, if you please.

Mr. BRADLEY. My name is Herbert Bradley; I am traffic manager of the Millers' National Federation, my office being at 58 William street, New York.

Senator KEAN. What is the Millers' National Federation?

Mr. BRADLEY. It is an association largely covering the entire milling business of the United States, its object being to secure the betterment of the conditions surrounding the general question.

Senator KEAN. How many members are in that association?

Mr. BRADLEY. About 1,000. I may state that I do not officially represent the association. I appear solely on personal requests of a number of millers who handle 100,000 barrels of flour daily—in other words, 200 cars per day—their business covering the States of Ohio, Minnesota, the Dakotas, Kansas, Nebraska, Kentucky, and Pennsylvania.

The federation has not taken official action on this matter, because they have not had any meeting; but I have no doubt they will take action at their next meeting.

Senator KEAN. The question of giving increased powers to the Interstate Commerce Commission has not been of sufficient importance to call a meeting of your federation?

Mr. BRADLEY. I have no doubt that the question will be brought up at the next meeting, June 7 to 9. So far as the millers in that federa-

tion are concerned—and I think I know a very large number of them—they have expressed themselves as against giving any increased power to the Commission.

Senator KEAN. Have you any complaint to make before the Commission?

Mr. BRADLEY. No, sir. The only complaint we made was the one Mr. Shaffield spoke about, which was made six or seven years ago. The Commission then gave that decision, which the railroads ignored. In the past, and up to the time of that meeting with the Commission, when we had that conference with them, we had a number of complaints against the conditions then existing which left the millers high and dry when they wanted the raw materials. But the railroads have largely overcome those difficulties by their own initiative, and not by reason of any order or decision of the Interstate Commerce Commission; the railroads realized that it was to their interest, as well as to the interest of the millers and manufacturers of the country, to grind the raw material in this country and export the finished product. As in all other kinds of business, there will be little things come up with the railroads, but we personally feel that such matters have always righted themselves to a large extent.

As regards rates, I am quite familiar with the present conditions throughout entire Europe. I have made 44 trips to Europe, in connection with the milling business. Two years ago we had occasion to try to fight a landing charge in London, and a bill was brought up in the Senate about that matter.

Senator KEAN. I remember the bill, and I remember that I was not in favor of it.

Mr. BRADLEY. That is all right. That is another matter. We tried to get around the landing charge that the steamship companies were insisting upon in London, and I tried to arrange for the shipment of a thousand tons of flour from Liverpool to London by the long route, a distance of 220 miles. They wanted to charge us more for that distance, which was the current rate going, than we pay to-day from Minnesota or Kansas points to New York City, a distance of 1,500 miles.

We have no complaint to make as regards rates in this country. I think the conditions on the other side are largely due to the fact that the English Parliament has given general authority to make a maximum rate, and we in this country fear that if we had the same conditions the railroads might live up to their maximum, and we would be the sufferers by it, as well as the railroads, to that extent.

Senator KEAN. Do you know the effect of the passage of that English bill?

Mr. BRADLEY. It was defeated by 5 votes in the House.

Senator KEAN. It did not pass the House?

Mr. BRADLEY. No, sir.

Senator KEAN. I can not see what you are going to accomplish by it.

Mr. BRADLEY. We think we have justice on our side; and at the present time the steamship lines, after a conference with us, have arranged that.

Senator KEAN. You think that would not be accomplished without legislation?

Mr. BRADLEY. Yes, sir; that is what we anticipate. We feel that we can better deal with the railroads than with any local body.

Senator KEAN. That is what I thought at that time.

Mr. BRADLEY. At that time they would not listen to us; but when they saw that we were determined to do something they changed their minds, and are now willing to give us a conference.

Senator KEAN. How far can you ship flour from your country?

Mr. BRADLEY. We find it impossible for the shippers to ship in the interior—that is to say, importations into London are largely for local consumption. The last time I was over there I was talking to a friend of mine, who, in addition to being an importer of flour, has a farm for his own private and personal benefit; he had quite a large farm about 30 miles out from London, and he raised a large quantity of wheat. Their wheat, on the average, is worth about 95 cents a bushel—that is, home-grown wheat, because the people prefer it, to a certain extent, to other wheats; it makes a blend which they like. He told me that he raised a large quantity of wheat, but that he was absolutely barred from shipping it to London to sell and then take back corn. The price of corn there, on the average, is about 50 cents a bushel. He wanted corn to feed to his live stock, but it was utterly impossible for him to buy corn at that high rate.

Senator KEAN. That was 30 miles out from London?

Mr. BRADLEY. Yes, sir. It would be the same with regard to country millers. They are simply localized. They can not ship any distance at all, anyway, on account of the excessive freight rates. We anticipate that if the rate-making power were given to the Interstate Commerce Commission we should be pretty well in the same boat, because if the Commission undertook to make rates they would have only one legitimate basis to work on, and that is the mileage basis. If we had a mileage basis in this country it would mean absolute ruin to the entire country.

Senator KEAN. You think, then, as an expert on tariff and in the milling industry, that if the Commission had the power to make rates they would eventually have to fix a rate which would be based on a distance?

Mr. BRADLEY. I can not see any other basis they could work on, because they have no other reasonable basis to stand on.

Senator KEAN. That is the only way they could prevent preferences between localities and communities?

Mr. BRADLEY. Yes, sir. There would be such continual trouble from the people locally situated that they would be obliged to do that. As it is now, each railroad develops the interests along its own line in this country. There is competition between localities, which is largely based on the necessities and requirements, as could be illustrated in many ways. For instance, take last year, when our wheat crop was very short, and a large quantity of soft wheat was brought from the Pacific coast all through the Southwest, and the railroads, in order to accommodate the situation, immediately cut the rate in half. If we had had to go before the Commission or appeal to them for a change in the rates, before it could have been accomplished the opportunity would have gone by.

We had a very good illustration of that last year also under the drawback law. Senator Hansbrough brought up that question in

order to try to keep up our foreign trade, simply because we had not the flour in this country to put into the foreign markets. We wanted to maintain our brand abroad. If that brand is out of the market six months at a time then we have to build that market up again. So we took some Canadian wheat, ground it, and exported that under our brand, simply to tide us over the difficulty. We applied to the Treasury Department for a ruling. We saw no reason why there should be any delay about giving it to us, but it took six months to get it, and when we got it the opportunity had gone by and it was no use. The millers have told me personally they would not make such an attempt again, because, apart from the delay and all that, the market would be gone; they had sold the stuff weeks ahead, and then they had claims of all sorts, because Government regulations were such that they could not work. We fear we should have the same conditions as that if any authority were given to the Commission to fix rates.

We also feel that it is absolutely impossible for any six or twelve men to sit in Washington, or any other place, and make rates governing the entire country. A traffic manager, to be able to fix rates, must be absolutely familiar with the daily necessities along the whole of his line. We have to remember that six presidents of various railroads can sit down and make a rate for 115,000 miles of road. I have talked with a great many railroad presidents, but I have never found one yet who could tell me the rate on any part of his own line. He simply calls in his traffic manager and asks him. The presidents do not know, and they do not try to know, anything about the rates. A man must be right in touch with such questions week in and week out. A man taking hold of a new line does not begin to touch the rate on that line until he has been in his position six months or more, and has become thoroughly familiar with all the circumstances, and it would be impossible to do differently.

Senator KEAN. You are familiar with rates in Europe?

Mr. BRADLEY. Yes, sir; at all points.

Senator KEAN. How do American rates compare with European rates?

Mr. BRADLEY. So far as Great Britain is concerned, where they pay $1 we pay 25 cents.

Senator KEAN. Their transportation is mostly by water?

Mr. BRADLEY. No, sir. Our rates are 25 per cent of what their rates are.

Senator KEAN. Is that true in France?

Mr. BRADLEY. Population is rather denser in France, and that is also the case in Germany. But the best rate they have in Europe is 50 per cent higher than ours.

The same principle applies to Government ownership of the railroads. I never want to get on a Government road if I can get away from it. They are using the same kind of engines and cars, and cars of the same capacity, that they used thirty years ago. In that time our railways, of their own initiative, have increased the capacity fourfold. If that initiative were taken away from them now, by the Commission getting control of the rate-making power, we feel that it would be a step down instead of a step up, to a very large extent.

Senator KEAN. What do you know about rebates being given?

Mr. BRADLEY. I do not think there are any rebates at the present time, not since the Elkins law.

Senator KEAN. I suppose you used to get rebates for your federation?

Mr. BRADLEY. No; at that time I did not have anything to do with getting the rates. My business was altogether looking after shipments, in order to meet conditions on the other side and be in touch with the whole interests of the business from start to finish.

Senator KEAN. You think the milling interests of the country would be better served by leaving the law as it is?

Mr. BRADLEY. Yes, sir; with one exception. I think the Interstate Commerce Commission, instead of having authority to make orders, as they have now, should be simply a body of investigators who, on complaint, should make an investigation, and then, if the complaint is well grounded, appeal at once to the courts and let the power stay there, and not make the Commission judge and jury as it now is. I think they could do better work and give better service to the public as well as to the Government.

Senator KEAN. You think the Commission would make decisions more promptly?

Mr. BRADLEY. Yes, sir. As it is now, it takes six months to a year to get a decision, and before you can get a change of present conditions your opportunity is lost and absolutely worthless in many lines of business. What we want is prompt action. But we feel that to bring politics into business would be the worst feature we would have to contend with under any circumstances. We think that the rate-making power should be left with the railroads as it is to-day. We think that the two things can not blend.

Senator KEAN. Is there anything further you desire to say?

Mr. BRADLEY. It is impossible not to have some slight criticism when the business of the country is so tremendous. I have had a number of times to bring matters to the personal attention of railroad officials, and in some few instances I have started out by correspondence, but I never found that to work. So as soon as I got to the point where I could see that we were drawing apart rather than coming together, I would jump on the train and go personally and have an interview with the railroad official with whom I had had the trouble, and I have never yet found a case where we did not promptly settle it.

I think a great deal of this agitation has been brought about largely by the railroads endeavoring to put in what is called the "uniform bill of lading." I know a great many of the roads in the West were against that uniform bill of lading.

Senator KEAN. Were you in favor of it?

Mr. BRADLEY. I was against it, and took rather the initiative in making the fight. As it is now, the railroads have come to realize that they made a mistake. The entire bill was withdrawn. I was president of the conference where the arrangement was made to withdraw the bill and substitute the old bill of lading. A committee was appointed, consisting of five shippers and five railroad men, to draw up a new uniform bill of lading, which is of value provided the shippers had equal say in drawing up the regulations, which they now have.

I think we can do better by going into conference with the railroads directly than through any influence or exercise of the party by the law-making powers. We would rather deal with the railroads than to deal with the Government.

Senator KEAN. Is there anything further you desire to say?

Mr. BRADLEY. I have nothing further to say.

STATEMENT OF MR. J. A. DAVIS.

Senator KEAN. Please state your name, residence, and occupation.

Mr. DAVIS. My name is J. A. Davis; Goldsboro, Caroline County, Md.; fruit grower.

Senator KEAN. How many acres?

Mr. DAVIS. In the whole tract of land?

Senator KEAN. Yes; what is the extent?

Mr. DAVIS. Four hundred and fifty acres in strawberries and about 50 acres in blackberries.

Senator KEAN. Your strawberries are just about getting ripe?

Mr. DAVIS. Yes, sir; we are picking some to-day.

Senator KEAN. I suppose you ship them in refrigerator cars?

Mr. DAVIS. Just as soon as we can have enough to load a refrigerator car we get the car. We have ordered one for Saturday next.

Senator KEAN. Before you ship the berries in these cars do you know what the freight charges are going to be?

Mr. DAVIS. Oh, yes. At each shipping point on our division there is a schedule showing what the refrigerator charges are per quart.

Senator KEAN. What road are you on?

Mr. DAVIS. The D. and C., a branch of the Delaware division, running from Clayton to Oxford.

Senator KEAN. One of the Pennsylvania branches?

Mr. DAVIS. Yes, sir.

Senator KEAN. Do they publish, in connection with the freight rate, the charges for all the transportation, including ice?

Mr. DAVIS. Yes, sir; everything is included. There is no charge above a half cent a quart to New York City.

Senator KEAN. Is there a tariff for refrigeration separate from the railroad tariff?

Mr. DAVIS. Yes, sir. It is so much per hundred pounds, and the refrigeration charges are one-half cent a quart, provided you have the minimum weight that the company demands, which is 16,000 pounds to Jersey City and 12,000 to Boston. In using the refrigerator car there is no monopoly on the Delaware division. The Swift people have one line, and the Armour people have another.

Senator KEAN. Does the Pennsylvania line have its own refrigerator cars?

Mr. DAVIS. The first refrigerator car that was ever shipped over the Delaware division was a butter-and-egg car that was owned by the Pennsylvania division. That car was shipped from Ridgely, with 10 ventilated cars, on a Saturday; it was opened in Jersey City on Monday morning. The berries in the refrigerator car sold at 13 to 15 cents a quart, and the berries that came in the 10 ventilated cars sold at 4 to 6 cents. In consequence of the good prices thus obtained, I went personally to Mr. Kingston, the division freight agent of the Pennsylvania Railroad, he being a friend of mine, and

asked him if he could not give me refrigerator cars. He said no; that the Pennsylvania Railroad Company had not cars enough to supply the whole division, and they would be afraid of lawsuits if they would give refrigerator cars in one section and could not give them to others. The next that came along was the C. F. T. car; it was a California Fruit Growers' Express. Mr. Maynard was the manager. I paid him $100 for the use of the refrigerator car to New York City. The next year we used the Eastman Line for $75.

Senator KEAN. How long ago was that?

Mr. DAVIS. I think that was ten or twelve years ago. Within the last two years the refrigeration has been one-half cent a quart on a car with 10,000 quarts in it to Jersey City.

Senator KEAN. That is about $50 per car?

Mr. DAVIS. Yes, sir.

Senator KEAN. You paid originally $100?

Mr. DAVIS. The first charge we ever paid was $100. We paid that one season only for cars now owned by the Swift people. The next year we used the Eastman cars, and paid the Eastman company $75 for the use of their car properly iced and with slats for loading the cars.

Senator KEAN. When you have any damaged fruit or berries, to whom do you make claim for that damage?

Mr. DAVIS. I have been growing fruit about fifteen years; I was in New York City for twenty-five years in the fruit business; and I learned that the fruit must be put in in good condition in order to get good prices, and with proper attention we do not have any poor fruit. If we put fruit in good condition in a refrigerator car it will certainly come out in good condition in New York City. Otherwise the refrigerator car would be of no service at all. I understood that Mr. Mead made the statement yesterday that the commission merchants did the paying. I have a brother in New York, and I know he does not do any paying for me, and when a brother does not, it is not likely anybody else is going to. I paid $600 last season for refrigeration, and I certainly would not keep that up if it was not a benefit. I made a statement two years ago before the Horticultural Society for the Peninsula that I believed in using refrigerator cars on the peninsula. I personally received from $4,000 to $6,000 more out of my crop of fruit by the use of refrigerator cars than if there had been no refrigerator cars.

Senator KEAN. Has the Armour Company a contract with the Pennsylvania Railroad?

Mr. DAVIS. No, sir; not so far as I know.

Senator KEAN. But you apply at the station where you do your shipping for a refrigerator car, and it is furnished?

Mr. DAVIS. We make our arrangements before the season commences, say with the Swift people or with the Armour people. I will say to them, "I will probably run 50 cars myself this year and would like to use your cars." Clayton is the junction of this road where the superintendent of the Delaware division is located, and where the train master, and so on, have their offices, and where the offices for the refrigerator people are also located. We try to let them know two days ahead, so that we will not get left.

Senator KEAN. In all this long experience of yours you have never had occasion to make a claim against the railroad company?

Mr. DAVIS. No, sir; nor against the refrigerator people either.

Senator KEAN. You are a pretty good shipper?

Mr. DAVIS. Well, you are not very far yourself from the New York market or from the Newark market. My brand of fruits is known at both places.

Senator KEAN. Have you received any rebates?

Mr. DAVIS. No, sir.

Senator KEAN. And you, as a shipper, are satisfied with the existing law?

Mr. DAVIS. Perfectly satisfied until something better is offered. We would be willing to have a little reduction in refrigeration charges for the same service, but we certainly do not want the service cut down in order to get lower rates.

Senator KEAN. You think the rates are reasonable?

Mr. DAVIS. Yes, sir.

Senator KEAN. But you would not object to pay a less charge?

Mr. DAVIS. That is human nature.

Senator KEAN. Do you think the railroad freight rates are reasonable?

Mr. DAVIS. I haven't a word to say against railroad freight rates so long as they put our stuff into Jersey City on time. When they don't do that, then we have something to say. Of course the Pennsylvania Company, on our division, has been a little hampered the past year, but they claim that they now have better facilities, and we are not going to have any trouble in getting our fruit into Jersey City.

Senator KEAN. Do you raise peaches?

Mr. DAVIS. Very few. We ship principally to New York.

Senator KEAN. Do you ever ship to Boston?

Mr. DAVIS. Yes, sir.

Senator KEAN. Did you ever have any experience with the people in Boston?

Mr. DAVIS. Yes, sir.

Senator KEAN. What has your experience been?

Mr. DAVIS. A few years ago I was loading three refrigerator cars a day for Boston and New York, principally New York, on joint account with a commission house in New York. A gentleman from Boston stood around and saw I was buying a pretty good grade of fruit. He took me aside and said, "I will give you $50 a car to buy peaches for me, two cars a day; I am located at Dover, driving across the country, and will pass this station every morning, and will leave you sufficient money"—not a check; the farmer likes money, not checks. I said, "$50 a car, two cars a day—$100 for two cars is pretty good pay for the farmer." I was about to accept his proposition. Then he said, "There is something else; you know that the Pennsylvania Railroad have no weight of refrigerator cars; you can put in 1,100 baskets of peaches and bill it 900." "Well," I said, "I guess not. That price is not hardly high enough to sell out for that." So I did not buy peaches for the Boston man, because I did not think $100 was enough to pay me for selling out.

Senator KEAN. He wanted a rebate?

Mr. DAVIS. The freight from our point to Boston is about 27 cents a basket—that is, for freight and refrigeration. If that man got 200 baskets without paying refrigeration charges or freight, he would not be out any money after paying me the $50 a car to do the buying.

Senator KEAN. He wanted somebody else to "pay the freight."

Mr. DAVIS. He wanted "Mr. Jones."

Senator KEAN. Do you say the railroads have no way of getting the weight?

Mr. DAVIS. At that time they had not. On their ventilated cars the weight is marked on each car; but there is no weight marked on the refrigerator car, because they do not know whether there is 4 or 5 tons of ice in the bunkers. Now, there is a resident checker put into the car, and that checker checks every basket of peaches that goes into the car and turns over his check to the railroad agent at the point from which the car is shipped, so that the railroad agent knows just what is in the car as well as the man who is loading the car. That was brought about by this particular fact, that the Boston commission merchants were anxious to get in 200 baskets of peaches without paying any freight or refrigeration charges on them.

Senator KEAN. What association is that?

Mr. DAVIS. Boston association?

Senator KEAN. Yes.

Mr. DAVIS. Well, now, it is hardly fair to give names when the men are not present. I can back any statement I make before you here, Senator. I do know that he got a man to buy him a car of peaches and ship them as 900 baskets when there was 1,100 in it, and the man bought anything that came in sight, and the commission merchant lost about $50 on that car of peaches and did not buy any more at that station.

Senator KEAN. You come from a large fruit region. What is the general sentiment in that part of the country about shipping berries and fruits in refrigerator cars?

Mr. DAVIS. The man who ships fruit in refrigerator cars is the successful man, and the man who does not ship fruit in refrigerator cars from the fruit district is still hanging by his teeth. The refrigerator car has the preference over the ventilated car on account of the carrying conditions and the picking. The train leaves there in the morning at half past 11, and we can not pick all our fruit in the morning, so the refrigerator car is sidetracked; and we pick in the afternoon and put into the refrigerator car as soon as possible after being picked. Consequently our fruit arrives in good condition. The man who picks his fruit overripe and stacks it up in his berry field until the next morning at 11 o'clock, and hauls it to the depot and puts it in the car, when the commission merchant in New York receives that fruit or berries the general complaint is that they are in bad order. Whereas we can pick Saturday afternoon and put in the car and finish loading on Monday morning and it reaches New York for the Tuesday morning market, and it will invariably be in good condition. Of course, conditions of the weather have something to do with it.

Senator KEAN. Now, Mr. Davis, as I understand you, you are satisfied with railroad rates and satisfied with refrigerator rates (although you would not object to having them less), but what you like is prompt delivery and good service?

Mr. DAVIS. Yes, sir; prompt delivery on the part of the railroad company.

Senator KEAN. In other words, you are not after cheapness so much as good service?

Mr. DAVIS. Good service is worth everything. When a train gets into Jersey City at 1 o'clock in the morning, ready for delivery, that will enable us to catch all the early outgoing trains. We can ship our goods as far as Montreal if we get them into Jersey City early enough, ready to go out on the trains that go from 7 to 9 o'clock in the morning, and in that way we can get prices that will pay us for growing the fruit.

Senator KEAN. Is there anything else you desire to say?

Mr. DAVIS. I do not think there is anything else, Mr. Senator, that I could say. We are using refrigerator cars for our own personal benefit. We have no interest in them at all, only that they help to bring us back dollars.

STATEMENT OF MR. JOHN M. EGAN.

Senator KEAN. Please state your residence and occupation.

Mr. EGAN. My residence is Kansas City, Mo.; I am president of the Kansas City Viaduct and Terminal Railroad, which is under construction at the present time; also president of the Union Depot, Bridge and Terminal property, part of that property being in the hands of the United States court, and I am receiver. I have been railroading since I was 16 years old, extending over a period of thirty-eight years. I commenced as a messenger boy, then apprentice in the machine shop, and have occupied positions as president on two or three different roads. In November, 1896, I went to Georgia as vice-president in charge of operations of the Central of Georgia Railroad. I remained with that road as vice-president for two years, until the death of the president, and then remained with it as president until the last of 1903.

After I went to Georgia one of the first things that was called to my attention was the difficulty they had in moving the fruit crop on the lines of the Central of Georgia Railway during the year 1896 and prior to that time. I want to say that perhaps nine-tenths of the Georgia peaches are shipped off over the lines of the Central of Georgia Railway. In fact, Mr. Rumph, the father of the Alberta peach, resides there. I took up the matter with the different subordinate officers of the railway to find out what the trouble was and how it could be remedied. I then went to the shippers, interviewed them personally, and found from them that what they wanted was prompt service and a surety that they were to receive cars when they wanted them and that the cars would be properly iced. I corresponded with all the different car lines and found that Armour & Co., or the parties controlling the Armour Car Lines, would agree to handle the business, agree to furnish cars, and to build ice houses for the storage of ice.

Senator KEAN. This was when?

Mr. EGAN. This was in 1897. We made an arrangement with them whereby they were to do all those things, and they were to do another thing, and that was that they were to place all the producers and all the shippers on a parity.

They performed their service well. There was discontent prior to that time, and parties had informed me that they would not plant any more peach trees. I did everything to foster and encourage that

industry. The consequence was that there have been millions of trees planted along the line of that road every year since then. There was one season when there were more cars and more ice needed than had been anticipated, and I know they brought train loads of ice from Lake Calumet, outside of Chicago; they brought ice down from the coast of Maine by vessel to Savannah and shipped it across the country to the ice houses there. Like everybody else the shippers all wanted not only lower railway rates, but also lower rates on refrigeration. But during the time I was there I received letters commending the road for the prompt service, which, of course, brought them money, by putting their peaches into the markets in good order.

Now, I want to say that the road did not have a refrigerator car and their connections had no cars that they could let the road have. They might have secured some refrigerator cars, but they had none capable of doing that business and doing it in a satisfactory manner.

Senator KEAN. The fruit crop of that region has increased very much, has it not?

Mr. EGAN. The fruit crop has increased very much. I think in 1896 the number of cars they handled was between 700 and 800, and before I left there the crop had increased on the line of that road so that the demand was for over 2,000 cars, and last year, I understood, the crop demanded between 4,000 and 5,000 cars.

Senator KEAN. That enabled the growers of fruit to get better prices for their peaches?

Mr. EGAN. Yes, sir; better prices for their peaches. And there is one thing I brought up with different parties there—the principal growers. I asked them why they did not arrange to start canning factories and can their peaches there. But they informed me that so long as they could obtain the prices they did in the eastern markets and in the western markets they would prefer to ship their peaches rather than to put up canning factories and can them.

What I say regarding peaches is also true regarding canteloupes and plums from that district. The plum shippers looked into the matter of refrigeration very closely before I made any arrangement at all with any of them. We considered then that the price charged was reasonable and fair.

I heard some gentleman say here yesterday, and I read in the testimony, that they could not tell what charge was for refrigeration and what charge was for freight. But they are separated both on the waybills and on the expense bills.

Senator KEAN. Did you furnish the shippers on the Central of Georgia road with a complete statement of what it would cost to get their goods to market?

Mr. EGAN. The shippers at every station were furnished with a tariff that was plain to everybody, not only a railway tariff, but also a tariff for refrigeration.

Another thing we did there: We bulletined at all the principal shipping stations each morning where the shipments went the day before, so that they could judge whether they desired their shipments to be forwarded to some other point, so there would not be what is called a "glut" on the market. We did everything we could to foster and encourage the industry, and I think we succeeded.

Senator KEAN. You say you transported 700 or 800 cars of fruit in 1896?

Mr. EGAN. And last year it went between 4,000 and 5,000.

There was one year, owing to climatic conditions, that we had no fruit. The ice was stored in the ice-houses, and we had to sustain that loss, of course. We have to take all these things into consideration.

Senator KEAN. Were any rebates given?

Mr. EGAN. No, sir; I never heard of any, except prior to the time when we went there, when all these car line people were in there scrambling for business, which they did very effectually.

Senator KEAN. What were the terms of the contracts you made?

Mr. EGAN. I would not want to recall.

Senator KEAN. State it approximately.

Mr. EGAN. So far as that is concerned, I have seen it stated that they would take care of the business, perform the service satisfactorily and at a stated figure, and they were liable for any damage that might accrue, so far as concerned the fruit not reaching destination in bad order if it was not properly refrigerated.

Senator KEAN. After you had made that contract in 1896, did you always have cars enough?

Mr. EGAN. We had plenty of cars, so far as that is concerned, commencing with 1897, but we were always nervous about that matter before the shipping season commenced, but the cars were there on the side tracks sometimes at least two weeks before they were used.

Senator KEAN. Do you know anything about existing conditions in that point of the country?

Mr. EGAN. The existing conditions, I understand, prevail just as they did when I was there.

Senator KEAN. Are they satisfied with the rates?

Mr. EGAN. I have heard no complaints about that, either as to refrigeration or service. Of course, we sometimes find a man who might ship perhaps half a carload, and thinks we are charging too much.

Senator KEAN. But the shippers generally are satisfied?

Mr. EGAN. So far as I know, and perhaps I have talked with every man on the line.

Senator KEAN. Who are the people who complain?

Mr. EGAN. You might find a man starting a new orchard, and perhaps shipping, for the first time, half a carload of peaches, and he might complain of the rate along with some other party for the other half carload, and who, not knowing the conditions, and perhaps not acquainted with the conditions that should prevail about putting the fruit into the cars in proper condition. That is one of the great secrets of success there, to put the fruit into the cars in good condition.

Senator KEAN. As I understood the president of the private car lines company, they look out for that especially?

Mr. EGAN. They do, but sometimes they bring the peaches and ask to have them shipped, and the private car people can not refuse them. The private car people have no voice at all in the distribution of the cars; the railway company does that.

Senator KEAN. Is there complaint as to the distribution of the cars?

Mr. EGAN. Perhaps you find some complaint. Perhaps if there were 10 cars ordered to one station and we have only 9 to send, there might be a complaint on that account. But at the present time that is very remote.

Senator KEAN. What about the routing business; do the refrigerator people have anything to do with that?

Mr. EGAN. They have nothing to say about that. We make those arrangements. We take the cars and deliver them to connecting lines, who have to handle the shipments properly, and if it is found that in some cases they do not it is diverted to other lines. There is one thing that has to be considered about diverting to other lines, and that is that we have to take the chances whether those lines are able to refrigerate those cars in transit.

Senator KEAN. Is there anything else you desire to say?

Mr. EGAN. I do not know that I have anything further to say about the matter.

STATEMENT OF MR. B. F. TRAVIS.

Senator KEAN. Please state your residence and occupation.

Mr. TRAVIS. Chattanooga; practicing medicine, and fruit growing—a strange combination.

Senator KEAN. What is the extent of your business?

Mr. TRAVIS. I have about 200 acres in trees in north Georgia. I want to say that my fruit industry is in Georgia entirely, while I live in Tennessee and represent a few individuals. I appear here as representative of those people who are engaged in growing fruit, peaches, principally, in north Georgia. That is comparatively a new industry. As the gentleman who just preceeded me stated, it only began a few years ago in north Georgia, while it is quite an old industry in south Georgia.

We want to say that we are satisfied with the Armour people, and we feel like we could not get along and exist in the fruit business without them, or something else equally as good. The peach is something that has to be gathered to-day, not to-morrow. It is something that has to have ice and prompt service. The private car lines companies have given us very prompt service.

I will state further that a few years ago we began there with only a few cars in north Georgia, yet we ran up last year to 2,800 cars, and they took care of us all the way through. Up to last year I do not know whether they made much money, and I do not know whether they did last year, but last year we had an unprecedented crop, one beyond our expectations, and for a few days we were hampered a little bit for cars. But we did not blame the refrigerator company because they seemed to be doing all they could. We were disappointed in not having a sufficient number of cars, and consequently we made a report to the railroads. I think that is what caused our trouble, but we feel that we will not have the same trouble again.

Senator KEAN. You underestimated your crop?

Mr. TRAVIS. Yes, sir.

Senator KEAN. You had hard work to get your fruit to the market?

Mr. TRAVIS. For a few days—that is, our stuff was delayed.

You may have heard that complaint here before. It is a fact that we were short of cars for a time, and that necessitated some of the

fruit lying along the tracks. But still we are not jumping on the refrigerator people or the railroads for that, because they all seemed to be doing everything they could for us. We got out of the hole without any great loss to those who took care of the fruit properly, gathered it properly, and at the proper time. I had some myself to lie on the track for thirty-six hours, but I instructed the commission house to put it on ice in refrigeration if it was good stuff. Of course, I did not tell them that this stuff had been lying out on the track. But if fruit is kept on ice it brings good prices. We are very well pleased with the charges. Of course we would like to get less charges, if we could, but that is a matter we have not figured on. We do not know exactly what it costs to build refrigerator cars; in fact, that part of it we have never had any kick on. We sometimes feel like railroad charges are a little exorbitant, but still we haven't given that subject any study, for our whole time and attention have been given to growing, and not on figuring whether the rates are too high. But we do want the service, and we can not afford to grow peaches in northern Georgia without the refrigerator people or some other company will give us the same or better service. We have no kick whatever on our service, from our standpoint. It is impossible to send peaches to market to New York or Boston without refrigeration.

Senator KEAN. Have you anything further to say?

Mr. TRAVIS. Nothing, except this: That the interest seems to me to be rather a mutual one between the refrigerator car company and the fruit grower. If they do not furnish the service, of course we go out of the business; and if we go out of the business there will be that much less tariff for them. As long as they will give us the service, that is what we want. We want service rather than low rates. Of the two, give us the service.

The following paper was ordered to be appended to the foregoing statement of Mr. Travis:

We, the undersigned fruit growers in the Chattanooga, Tenn., and north Georgia districts, hereby request and fully delegate Dr. B. F. Travis to represent us before the Senate committee in the matter now before that honorable body, bearing on the bill before Congress relative to the operation of private cars.

EBERLY FRUIT CO.,
By G. EBERLY, *President.*
S. B. COOK.
O. G. WILSON.
L. S. COLYAN.
A. S. COBBLY.
N. DIETZER.
N. DIETZER & BRO.

CONTINUATION OF STATEMENT OF MR. F. B. BOWES.

Mr. BOWES. Shall I resume, Mr. Chairman?

Senator CULLOM. Yes; proceed with your statement.

Mr. BOWES. I shall take but little time this morning. Fifteen or twenty minutes will suffice for the presentation of what I have to say. There is just one feature about this advance in the lumber rates I wanted to touch upon, but did not have the opportunity yesterday, and it will take but a very few minutes to explain it.

During your hearings witnesses for the lumbermen have testified

that the action of the railroads advancing the rate was an injustice to the lumber people, and that it was oppressive. Now, I will try to show the committee who the oppressors and the oppressed were. The advance of 2 cents a hundred referred to, as you know, took effect April 15, 1903. The prices of yellow-pine lumber in May of that year had about reached their highest notch. In other words, the prices were very satisfactory to the shippers and producers. In May, 1905, two years later, and during which interval no further advance had been made in the rates, what do we find the condition to be? We find a substantial advance in prices of yellow pine has been made on several occasions in that period, ranging from 10 to 20 per cent of the prices that prevailed at the time that particular advance took place. Of course, you know who has to pay that. That is the consumer. The sole beneficiary of that advance is the manufacturer and producer of lumber.

Notwithstanding these heavy advances in the prices, I saw in the papers in Chicago a week ago that the various yellow-pine associations had decided to make another advance of 50 cents per thousand feet. That means substantially an advance (taking it on the average weight of the lumber, about 3,500 pounds) of 1½ cents a hundred. That is the last advance.

It is well known to everyone who has had dealings or comes in contact with the lumbermen of the Mississippi Valley that all of them who have any extensive holdings have made fortunes in the last seven or eight years. The railroads are glad of that. They may proceed to make as much money as they can. Their prosperity is our prosperity. We are finding no fault at all with that.

But we do most emphatically take issue with the lumbermen that we are the oppressors, and that our action has inflicted injustice upon them. This fact can be easily verified.

Furthermore, a week ago, in talking with one of the largest lumber manufacturers in the Mississippi Valley, located on our road, in answer to my inquiry as to what the conditions were, he said they were never better; that furnishing cars to carry away the product and the paying prices were all they could ask for.

Now, there are a few matters of an incidental nature that were noted by us in the course of some of the testimony of the past few days.

Mr. Mead made some reference to icing charges, comparing the icing charges and shipments from Gibson, Tenn., which I think is on the Mobile and Ohio, with the icing charges made on shipments from Memphis over the Illinois Central, both in Armour refrigerator cars. In order that a clear understanding may be had of the Illinois Central in the matter of refrigerator cars, we wish to say that we have no contract with Armour or any other private refrigerator car line. We have probably the largest supply of refrigerator cars of any railroad in America, in proportion to our mileage and in proportion to our general equipment. For instance, in June, 1903—and the conditions since then have improved in the matter of refrigerator cars—we had 9½ per cent of the total number of refrigerator cars owned by railroads; whereas, our mileage compared with the total mileage in the United States was 2.6 per cent. I contrast that with

other railroads who have more or less refrigerator-car equipment, to show how we have provided for the wants of our patrons.

We have a very large traffic in perishable fruits, vegetables, and like truck. The range of production is about 700 miles, extending from a point about 225 miles south of Chicago, in the neighborhood of Kinmundy (with which the Senator from Illinois is familiar) to New Orleans. Of course the earlier vegetables come from the extreme southern points first, and gradually work northward, so that we have fruits and vegetables in order, first, from Louisiana, then Mississippi, then Tennessee, and finally running into Illinois, starting in early in Louisiana, in February and March, and ending in July in Illinois.

In addition to this we have a very large foreign fruit traffic in bananas imported from Central America. That traffic alone requires the use of refrigerator cars every day in the year—because bananas move every day in the year—a large equipment.

Of course the traffic in perishable fruits and vegetables extends over a period of only four or five months in each year.

In regard to the two cases cited by Mr. Mead, one as having occurred at Memphis on the Illinois Central, I am not familiar with the facts showing the charge of $15 for the ice. I understand that we used an Armour car. I assume, however, that when we were tendered the shipment we might not have had an Illinois Central refrigerator car at Memphis, and, as the Armour car was available at that time, it was used, and the ice put in that car was charged for, and I suppose it amounted to $15.

Senator CULLOM. What is the size of your cars as compared with these Armour cars, for instance?

Mr. BOWES. Our last refrigerator cars I think in cubical capacity are larger. I do not say that positively. We have been increasing the size of our cars right along.

I now wish to refer very briefly to the statement made by Mr. Robinson, who represented, as he said, the New Orleans Board of Trade, the C. W. Robinson Lumber Company, and the Central Yellow Pine Association. On May 16, the twenty-fourth day of your hearings, he appeared before the committee, and the only claim he made on behalf of New Orleans was:

> She (New Orleans) feels that even now they (the eastern trunk lines) are moving grain at or below cost to them of transportation in an attempt to make water flow uphill—in an attempt to overcome by artificial means her natural advantages. She asks that they be restrained from this attempt.

I wish to say that the New Orleans Board of Trade or the New Orleans people need entertain no fears with respect to a condition of that kind arising. They can safely leave that interest in the hands of the railroads, whose interests in holding that traffic to New Orleans, I think, are greater than even those of the community. That can be accomplished, in my opinion, provided the present legislation is allowed. But if the proposed increase of powers or proposed legislation are brought to bear on the railroads, I doubt whether it would be brought about. I just make that as a reference to the only claim Mr. Robinson made in behalf of the New Orleans interests.

He also made a statement which we think ought to be submitted to your committee. He argued, on page 29 of his statement, that the report of the Industrial Commission be considered by this committee. I would not mention this matter were it not that he came here as representing a commercial body in the city of New Orleans, which city is served by the Illinois Central Railroad, and said he was a shipper of yellow-pine lumber from points which, although not on the Illinois Central, are on railroads connecting therewith in Mississippi. It might therefore be inferred that his remarks about overcapitalization related to the Illinois Central Railroad.

On this subject the sworn statement of Mr. Stuyvesant Fish, president of the Illinois Central Railroad Company, as a witness before the Industrial Commission on Transportation, will be found in volume 4 of their report, beginning at page 320.

Mr. Fish then said, in reply to a question:

We have never issued any stock below par. (Page 326.)

Our capitalization does not represent by, it is safe to say, $20,000,000 what the property cost. (Page 326.)

Q. Absolutely no water in it?—A. No; no water. (Page 326.)

At page 331, Mr. Fish, in speaking of American railroads in general, said:

What may have happened forty or fifty years ago I do not know, but in the last ten years the railroads of the United States have gone through a process of undercapitalization, not only as to the amount, but as to the rate of interest. In all the recent reorganizations the 7 per cent bonds which the bondholder had a right to exact under his contract have been put in at 3½ and at 4 or 3, or whatever the rate may be. There has been a tremendous undercapitalization in the last ten years out of that.

Mr. Fish also submitted a comparative statement of the capitalization of railways in Great Britain and in the United States for the years 1890 and 1898, which will be found on page 331.

I have personally nothing to do with the books relating to the capitalization of the Illinois Central Company, and can not speak from personal knowledge on these matters, but have been requested by Mr. Fish to say that if the committee want further information on the subject he will furnish it.

I do not know that I have anything further to say, Mr. Chairman.

Senator KEAN. I suppose you were here the other day and heard Professor Ripley?

Mr. BOWES. Yes, sir.

Senator KEAN. Have you read his testimony?

Mr. BOWES. I have not read it since it has been filed, but I was here throughout the entire day and listened with considerable interest.

Senator KEAN. If his ideas and notions were carried out, what do you think the condition of this country would be?

Mr. BOWES. Of course, as everyone could see, Mr. Senator, his whole presentation was founded on pure theory. He never had any practical railroad experience, but he was trying to evolve a solution of our troubles.

He was very clear on the question of pooling, which he favors, but on all other points his ideas and remarks were to me very vague, with the possible exception that he tried to make clear that one of the solutions of our troubles would lie in the division of territory, whereby

certain railroads would serve certain localities and would not be permitted to go outside of that radius to serve some other locality that could be served by a shorter line.

To my mind, that would mean, if enforced, a restriction of competition, which would be prejudicial to the railroads who desired to engage in the traffic, and, I should think, to the community located on that railroad, and prevent shippers from conducting business in that territory. It would be narrowing and limiting the sphere of a railroad's activity, or the producer's or manufacturer's activity.

I can give you a concrete case in regard to that: By the short line the distance from Chicago to San Francisco is substantially the same as from New Orleans to San Francisco. The distance from Chicago to New Orleans is 912 miles. We are not the short line. There is a distance of 912 miles to be overcome. The Illinois Central engages in San Francisco business directly via New Orleans from the Chicago territory, and there is a large amount of that business, and we engage in it right along.

Senator CULLOM. How far is that?

Mr. BOWES. The distance from New Orleans to San Francisco is 2,489 miles.

The CHAIRMAN. By way of Chicago?

Mr. BOWES. No; by the Southern Pacific, the short line. The short distance from Chicago to San Francisco is about 2,500 miles. So that the distances from New Orleans and from Chicago to San Francisco are substantially the same. But the Illinois Central might engage in that traffic between Chicago and New Orleans as long as we feel that it is to the interest of the company to do it. True, we do not get the same rate per ton per mile on that traffic that we would get on traffic going to New Orleans directly or to some point served exclusively by our roads. But it is traffic worth engaging in. We perform very satisfactory service and we get a good deal of it.

If Professor Ripley's theory were reduced to practice we would be debarred from that traffic, and the short lines from Chicago to San Francisco, through Omaha, Kansas City, and St. Louis, would monopolize that traffic. I do not think that is a good theory.

Senator CULLOM. If you can make money by sending freight from Chicago to San Francisco around by New Orleans, you certainly ought to make a great deal more money if you sent it straight through. The assumption is that by making your charge for the long distance around you can still make money. If that be so, the charge for sending it straight through, by whoever does it, must be a very stiff charge.

Mr. BOWES. Not necessarily, Senator.

Senator CULLOM. I want to hear what you have to say on that.

Mr. BOWES. The conditions under which we should engage in through traffic of that character would have to be weighed and considered. Those are presented in the different cases that arise and have to be decided. But, Mr. Senator, we would not engage in traffic where the through rate through New Orleans would give us, upon a division, an unremunerative proportion. We would not want that, of course.

Senator CULLOM. I wanted to hear what you have to say. You

say you make a good deal out of the traffic that you carry around. If that be so, the railroads that carry straight through on short lines ought to make a very steep profit, I should think.

Mr. BOWES. They, of course, would have to answer from their standpoint. I would not undertake to do that. But, you see, it is adding to the volume of our traffic in the direction of New Orleans, and the greater the density of traffic, of course, the cheaper relatively we can haul it. That would be our condition. As to what the Santa Fe, the Rock Island, or the Burlington System would regard as proper rates from Chicago to San Francisco, for themselves, they would have to be governed by their conditions, with which, of course, I am not familiar.

Senator CULLOM. Do you mean that you could force the other roads going directly through to lower their rates?

Mr. BOWES. No, sir. We simply have an option, under the present unrestricted competition, to engage in that traffic, if we think it best. Their rates are our rates. We have the privilege of going out of that traffic if it is not, in our opinion, paying us. It simply adds another railroad to the list of those competing for the traffic. The beneficiaries of that competition are always the consumer and the shipper. I will not say as to the producer.

The CHAIRMAN. You have no other great competitor between Chicago and New Orleans?

Mr. BOWES. Yes, sir.

Senator CULLOM. I am not raising any question about your doing business there; but I want to know from you what effect that would have on the general charge for freight going through by short lines from Chicago to San Francisco.

Mr. BOWES. Of course, rates from Chicago to San Francisco are made by the transcontinental lines, and they are made with due consideration for the conditions governing the cost of transportation over the various roads. We get the rates via New Orleans when we choose to engage in this traffic.

There is one other point which I desire to make. Of course, the Southern Pacific Railroad, as you gentlemen know, originate and control a very large traffic, which they can deliver at various junctions; at New Orleans, where they have their long haul also to the Missouri River, and we naturally want some of that business. In giving them long-haul business at New Orleans we place them under obligations to reciprocate and give us some traffic. That is one of the things that occurs to a railroad man as to increasing the volume and value of his traffic for the benefit of his company.

Senator CULLOM. To get business wherever he can.

Mr. BOWES. Yes. That is about all that I have to say on any of these questions.

Senator DOLLIVER. I am very sorry, Mr. Bowes, that I was compelled to be absent during the main part of your statement on account of a slight illness. If you have covered the matters that I want some information upon I shall abstain from asking any questions.

Mr. BOWES. I will be very glad to answer to the best of my ability.

Senator DOLLIVER. It has been represented here among the grievances of our live stock people in Iowa that a citizen of Nebraska can buy stock cattle in Colorado or the Southwest, bring them to Nebraska, fatten them, and pass on to Chicago with them upon a single

through rate, which I think has been described as a feeding-in-transit rate, whereas a citizen of Iowa, desiring to do the same thing, is denied that right. I would like to have some information from the standpoint of the Illinois Central Railroad as to that question.

Mr. BOWES. I do not know the circumstances that bring about an arrangement for applying a through rate on shipments from Colorado, say, to the Chicago market with the privilege of feeding in transit at some point in Nebraska. I suppose the railroad originating the traffic, possibly the Union Pacific, considers it to its interest to do so. In order to get their rate, however, they have to have the support of their connections east of the Missouri River. Now, speaking offhand on a similar question presented by the Iowa shippers, if the case was presented to the general freight agent or to the traffic manager of our company, I think we would entertain it in just about this fashion, provided the connection west of the Missouri River (in this case being the Union Pacific) would participate in a through rate I would see no objection to granting them substantially the same privileges that are afforded in Nebraska to the shipper there. It would be to our interest to do so, but the Union Pacific road might or might not do that. If they said, We would like to establish a feeding-in-transit arrangement at points on your line between Omaha and Chicago on a shipment through from Colorado at a through rate; it is being done in Nebraska and we think it is a good thing, I think we would certainly give it consideration. However, I would not say that we would do it.

Senator DOLLIVER. Suppose, to make the case concrete, that a citizen and a cattle feeder along the line of the Illinois Central Railroad would get it into his head that he would like a feeding-in-transit rate, buying his stock of cattle in Colorado or some other western section. How would he go about to get the same privilege in that respect that a citizen of Nebraska has now?

Mr. BOWES. If he were located on the Illinois Central it would be his duty to take it up with our local agent or directly with the general freight agent in Chicago. If the general freight agent thought well of the arrangement, he would take it up with the line west of the Missouri River to see if they would participate in that through rate.

Senator DOLLIVER. If they refused to do it, would not that be a very substantial discrimination against an Iowa feeder compared with the feeders farther west?

Mr. BOWES. On the face of it it would look that way, but I think that in all these cases we have got to have all the facts and conditions surrounding them in order to give intelligent treatment.

Senator DOLLIVER. You are familiar with the fact that the western cattle shippers and feeders enjoy that privilege in Nebraska?

Mr. BOWES. No, I must say that I am not personally familiar with it.

Senator DOLLIVER. Has anybody ever made application to the Illinois Central Railroad for a similiar privilege?

Mr. BOWES. They may have through the general freight agent. I personally have no knowledge of ever hearing of anything of the kind.

Senator DOLLIVER. Would you regard it to the interest of the

Illinois Central Railroad to deal with its patrons on as liberal terms as people living in Nebraska are dealt with?

Mr. BOWES. That is what we are aiming to do every day in the year. We aim to see that our patrons enjoy in all classes of shipping, manufacturing, and so on, an equality with other patrons. That is the position that we take all of the time. Conditions may arise when we can not bring about our own ideas, and where some feature like a connection who would not agree to participate with us on a thing of that kind interferes. It is pretty difficult to answer a question of that kind without having gone through the necessary work attending it to find out if it could be done. We say that we regard the proposition generally in this way. We like to keep our shippers, our receivers, and manufacturers in any State on a parity with those in a neighboring State, enjoying the same privileges, engaged in similiar traffic. We say that as a general proposition.

Senator DOLLIVER. Are you familiar with the policies of our railroads in the western country as to the building up of manufacturing institutions along their lines?

Mr. BOWES. I am familiar with the policy of our road.

Senator DOLLIVER. Now, what is that?

Mr. BOWES. The policy of our road in that regard is this: We have an officer called an "industrial commissioner," whose duties are to look after that very question—to look after the securing of the location of industries on our line. In his efforts to first ascertain where we can find suitable prospectors, and so forth, and subsequent conferences with them, he is supported by the traffic department, and of course the question of freight rates is usually the determining factor as to whether a man locates on the Illinois Central or on some other road.

Senator DOLLIVER. What do you say of the statement that the railroads have decreed that certain States, among others the State of Iowa, are to be agricultural and to be kept out of the manufacturing business altogether or in a large measure?

Mr. BOWES. I never heard of such a statement; I don't think there is anything to it. I am sure, so far as our road is concerned, there is absolutely no restriction of that nature in the minds of its traffic officers in any of the thirteen States through which we pass.

Senator DOLLIVER. Your idea is to build up factories along the line in all the States?

Mr. BOWES. Yes.

Senator DOLLIVER. Has your traffic department ever considered the effect upon the meat-packing industry of the present rates upon live stock, as compared with that description of traffic commonly called meat products or packing-house products?

Mr. BOWES. Well, the general question of rates of packing-house products and of cattle and hogs has been up a great many times; so far as I know, the State of Iowa has quite a few of those and they have been run for a number of years successfully and are making money.

Senator DOLLIVER. There are none of them outside of the city of South Omaha, on the Illinois Central Railroad, are there?

Mr. BOWES. Yes; at Cedar Rapids there is one of the most successful in the State of Iowa, and I suppose one of the best conducted packing establishments in the United States.

Senator DOLLIVER. That is on a branch of your road?

Mr. BOWES. Yes.

Senator DOLLIVER. Now, what is the difference in the rate upon packing-house products, as compared with live stock, at present?

Mr. BOWES. I have not got those figures with me; I regret that very much.

Senator DOLLIVER. As a general traffic proposition, if the rate put on packing-house products is in excess of the rate put on all live stock, would not such a rate operate to discourage the packing of the stock in Iowa?

Mr. BOWES. Well, the very fact that the adjustment of rates permits of the manufacture of the raw material into the finished products and it exists and exists successfully in the interior places, as at Cedar Rapids, Des Moines, and Ottumwa, I should think would be a better answer to your question than the abstract proposition you present—that is, the very fact that there are conditions of that kind and that they have been in effect for a number of years and that they are successful.

Senator DOLLIVER. Traffic managers differ among themselves, do they not, as to what ought to be these comparative rates?

Mr. BOWES. They differ, just as eminent lawyers of the country differ on different questions; they are no more infallible than are the lawyers.

Senator DOLLIVER. Is it not true that if the rate on the finished product exceeds the rate upon the raw material that the tendency of such an adjustment is to carry the raw material out and to discourage the manufacture of the article in the State?

Mr. Commissioner FIFER. I think, Senator Dolliver, the reverse of that is true in the State of Iowa. I think the rates there are so adjusted that the live animal for 100 miles this side of the Missouri River can be carried to Omaha and slaughtered and its products be carried back then to Chicago as cheaply as the live animal can for the distance of 100 miles this side of the Missouri River. I think that is the present adjustment of the rates.

Mr. BOWES. I would rather answer that question not offhand, but after I have examined the conditions that prevail with regard to rates. Had I known that the question would be up I should have prepared myself.

Senator DOLLIVER. That is all I desire to ask.

Mr. FISH. Before Mr. Bowes finishes, Mr. Chairman, may I say just one word? I think it is fair to Mr. Bowes to say that his relation to our company has been more with the southern than with the western lines. I would rather that Mr. Bowes would say it than that I should. One other thing I would like the committee to allow me to say, and that is that the Illinois Central Railroad has no lines of railroad west of the Missouri River in Nebraska. I would also rather have that said by Mr. Bowes.

Senator CULLOM. It is said well enough by the president of the road.

Mr. FISH. I would also like to add that there are packing houses in Sioux City, Iowa.

Mr. BOWES. I thought that Senator Dolliver had in mind the interior of the State, and thought that everybody was acquainted with the fact of the packing houses at South Omaha and at Sioux City.

Senator DOLLIVER. Yes; I was familiar with the location.

Mr. BOWES. You had in mind the interior of the State, did you not?

Senator DOLLIVER. Yes.

Mr. BOWES. That is what I thought.

Mr. FISH. I would like to make the statement a little stronger and say that we have no railroads west of the Missouri River, and no relations whatever with them—no alliance of traffic or arrangement—nothing except the ordinary interchange of business.

STATEMENT OF MR. I. B. PANCKE.

The CHAIRMAN. State your name, residence, and occupation.

Mr. PANCKE. I. C. Pancke. My residence is in West Virginia. I am a grower of fruit. I would like to say what I have to say in a very few remarks, simply by saying that I represent the Allegheny Orchard Company, a company that is chartered and incorporated in the State of Virginia, and was a few years ago, for the purpose of growing fruit and shipping and marketing fruit. This company owns and operates several plants or orchards, all located in the three contiguous counties of Mineral, Morgan, and Hampshire. These counties are all in the northern part of the State and located on the south side of the Potomac River, opposite or nearly opposite to the city of Cumberland, Md. When this business was first commenced about fifteen years ago it was a very small affair, but by judicious management and good car line service in the way of refrigeration it has expanded rapidly, especially in recent years, until it now contains in the aggregate approximately 160,000 to 165,000 bearing trees, and if we add to this the allied interests of a number of our stockholders, we have in round numbers over a quarter of a million trees, say 275,000 trees. During the last six or eight years the bulk of the products from these orchards has been shipped in refrigerator cars, and so popular has this method become that I can not see how we can in any way dispense with it; and if anything is done to deprive us of this service in the future I think that a crisis must arise that would inevitably result in disaster, not only to the fruit interests in our State, but throughout the fruit districts of the country generally.

I have no desire whatever to make any argument. I simply outline this brief statement as a basis in order that the committee may ask me any questions that any member of it desires.

The CHAIRMAN. How many bushels or pounds or crates of fruit do you ship? What is the extent of the allied interests?

Mr. PANCKE. These allied interests to which I refer are not bearing, but our company, the Allegheny Orchard Company, last year shipped about 150,000 to 160,000 baskets of approximately a half bushel each.

The CHAIRMAN. And the service of the refrigerator private car system has been satisfactory both as to freight, condition, and promptness?

Mr. PANCKE. The service has been good.

The CHAIRMAN. Are the rates too high, or what is the matter?

Mr. PANCKE. That I hardly know. I could simply say, as the gentleman who preceded me, that I don't know as we can ever be satisfied. We do not know when the bottom will be reached. It does not occur to me that the price is too high.

Senator DOLLIVER. Is the bottom going up or going down?

Mr. PANCKE. That I could not answer. The service has been prompt and I think it has been generous and just about as accommodating as it can well be. I have no complaint to make whatever.

Senator CULLOM. That is all you came here to say, is it not, that you are satisfied?

Mr. PANCKE. Perfectly satisfied, and I have nothing to say but simply to answer any questions that you desire to ask.

Senator KEAN. How do you know the rate at which you ship your freight?

Mr. PANCKE. You mean the car-line refrigerator freight?

Senator KEAN. Both rates; that is, before you ship do you find out how much you have got to pay?

Mr. PANCKE. We know the freight rate in the beginning of each season simply by applying to the railroad agents for the schedule of tariffs.

Senator KEAN. What does the railroad agent give you?

Mr. PANCKE. He gives us the rate that has been made by the railroad people.

Senator KEAN. Does that include the refrigerator cars?

Mr. PANCKE. No.

Senator KEAN. How do you find out what rate you have to pay on those?

Mr. PANCKE. We apply direct to the refrigerator people. They give us a stipulated price. Our company is a large one and ships to only a few points—possibly half a dozen points, say, beginning and sometimes to Boston and Buffalo and Cleveland and Cincinnati. We simply apply for those few points.

Senator KEAN. Did you ever see a printed card of rates of refrigeration?

Mr. PANCKE. Not of refrigeration, I think. The railroad company furnishes a card giving the rates.

Senator KEAN. But the refrigerator people do not?

Mr. PANCKE. No; I think not. We simply apply to the managers of the car line and they give us the rates.

Senator KEAN. They have no tariff?

Mr. PANCKE. Not that I know of.

The CHAIRMAN. Do you use the Baltimore and Ohio refrigerator cars or the other ones?

Mr. PANCKE. We use both, but principally the Armour car. Occasionally we use the Baltimore and Ohio. We can use the Baltimore and Ohio car to a near-by point.

STATEMENT OF MR. H. L. GLEASON.

Senator KEAN. Please state your name, residence, and place of business.

Mr. GLEASON. I live at Hartford, Mich. I am a fruit grower and shipper. My name is H. L. Gleason.

Senator KEAN. Will you state the extent of your business?

Mr. GLEASON. Well, about 100 to 125 cars of peaches yearly besides apple shipping; but, of course, that has nothing to do with this question.

Senator KEAN. On what roads do you ship?

Mr. GLEASON. On the Pere Marquette.

Senator KEAN. What have you to say in regard to the shipment of peaches?

Mr. GLEASON. Simply this: I think I shipped the first carload under refrigeration that was ever shipped from our section, and I have shipped nine-tenths of all that has ever been shipped from there. I began in the year 1896; that is, the heaviest shipments began then. I had shipped some previous to that and used whatever cars I could get hold of at just the cost of the icing. I shipped in that way, I think, seventy-odd cars in 1896. In 1896 I was not satisfied with the service. The icing capacity of most of the cars, especially any that we can get hold of, is too small. Of course, they will bring fruit through many times in presentable condition, but not in first-class order, and in 1897 the Armour people came in there with their cars and gave us our choice to use free cars or pay them a price for theirs.

All of my business was done that season—or practically all, unless it was a short haul somewhere—in the Armour cars, and I paid them—I think the rate was $40 or thereabouts; either $40 or $45 to New York and $30 to Minneapolis and St. Paul. The most of my shipments was to Minneapolis and St. Paul during that season, and I never had a loss during the entire season. Then in the next year I did the same, and then in the year 1900 the railroad company sent out word to us that they were going to do the icing free and do our shipping in that way. Thinking perhaps it would be cheaper I tried that scheme and lost, I think, one-third of my shipments for want of care, for want of ice, and for various other reasons. In the next year our fruit crop was a failure. In 1892 I began with the Armour people again and have used their cars whenever I could since, and have never had a loss in one of their cars until here this last year. Last year I had some loss, owing to the negligence of the railway company. The cars were from six to eight days from our station to Boston, and in that way I had quite a number of losses, but previous to that I never had in the Armour cars. The M. D. T. is the only car that we have that goes east practically, and the icing capacity of the M. D. T. is not to exceed 3 tons, and very seldom you can get that much in, while the icing capacity of the Armour is about 5 tons, and the excess body of ice in the Armour car assures a better quality of fruit when it gets to its destination every time, and it is reasonable, because the bigger the body of ice the more its cooling capacity, of course.

I came here at the request of our growers, principally, and I could have brought a petition signed, I guess, by every grower in our district in favor of the Armour car—that is, unless we can get equal service with some other car. If we could get equal service and equal refrigeration, of course, we would like it cheaper. There is no question about that. On coming away I put in my pocket a couple of receipts of two cars, showing about the difference between the free car and the Armour car with equal ice capacity. Here are two carloads selected as near the same dates as possible. One was shipped the 29th of September and the other October 3, to the same parties, at

the same markets, and the same quality of fruit. It shows the difference in the icing between the free car, as they call it, and the Armour car. The charges on the P. M. car, which was an old, dilapidated thing, were $77.50. I refer now to the freight charges and the icing charges on the Armour car, which was $85, or $8.50 more for the Armour car than for the P. M. car.

Senator KEAN. What was the difference in the capacity of the cars?

Mr. GLEASON. The shipping capacity of the cars was the same. The Armour car on the market netted me $396.77 and the free car $230.84, and in the same market on the same class of goods. That has been my experience through shipping—that there is from $100 to $150 more net to the shipper in a large icing capacity car than there is to the smaller ones, I do not care what the other circumstances are.

Senator KEAN. Then you consider the $8.50 you paid a reasonable excess?

Mr. GLEASON. I do. Of course if we could get equal service for less money we would like it, but we do not want to sacrifice service and refrigeration for a few dollars in money, because in the end we consider that we would be the losers by so doing.

Senator KEAN. How do you make arrangements with your shipments?

Mr. GLEASON. They publish a schedule, and it is given to all of the shippers showing the charges to the different points throughout the United States.

Senator KEAN. Do you know when you ship a carload of peaches exactly what it is going to cost you?

Mr. GLEASON. I do, sir; exactly. There is no question about that because the icing charges are through to destination and very often I have had cars stand there and they have even reiced them a second time before starting without any extra charge, and my experience, as I say, has been that we could not very well go back to the old cars that were used to ship in without a heavy loss.

Senator KEAN. Then you think the rates are high?

Mr. GLEASON. The rates are a little high, I think; yes, sir

Senator KEAN. I mean the freights.

Mr. GLEASON. The freight rates are high, but I would not complain about that if they would give us any service whatever. There is the trouble. I had a great many losses last year in shipping to Boston and New York and to Scranton, Pa., through the neglect of the railroad—six, seven, and eight days when forty-eight hours ought to carry them through.

Senator KEAN. Well, it was not intentional on the part of the railroad?

Mr. GLEASON. I do not think so; no, sir. I think, to be fair, that it was from the fact that it was given out generally along the line that there were no peaches. I do not think the Pere Marquette made any arrangements to handle peaches during the last season; but they found that in certain localities—Van Buren and Berrien counties—they had quite a heavy crop, and the railroad company was not prepared to handle it.

Senator KEAN. Don't you generally give notice to the railroad company, as a grower, about how many carloads of peaches you expect to ship during the season, and when?

Mr. GLEASON. We notify them; yes, sir. We did not notify the

railroad company. We notify the Armour people, but not the railway company.

Senator KEAN. Those peaches that were shipped in Armour cars—did they arrive in good condition?

Mr. GLEASON. The most of them. There were exceptions, however. I do not care how good the Armour service is, it does not make any difference if that car is detained between icing points. They can not ice it, you see. But my experience with Armour is that if the car is moved as it should be moved you never get any cars that come in for lack of ice. I never had one report in all that I shipped in Armour cars—I never had a car reported at destination without ice or with low ice.

Senator KEAN. Do you hear many complaints in your part of Michigan?

Mr. GLEASON. Yes.

Senator KEAN. In regard to the shipments?

Mr. GLEASON. In the Armour cars?

Senator KEAN. In the Armour cars, and the charges they make.

Mr. GLEASON. Nothing, only in the grape district. Of course the grape business does not need the refrigeration that the peach business does, and a great many times I have heard the grape men kick, but never a kick from the peach growers or the shipper in our district. I have sold to eastern buyers a great deal, to Scranton, Pa., New York, Boston, Rochester, and those places, and invariably they have requested all our shipments to come in the Armour cars in preference to any other; and as shippers the Armour car is an advantage to the shipper from the fact that you may load today in an Armour car and you do not know perhaps where it is going. You are expecting to sell it. That car will go east, west, north or south, or any point without any trouble; and the private railroad cars—the Santa Fe—they have a line of refrigerator cars, but you can not use them for eastern shipments at all. You have got to ship them over the Santa Fe system or you can not use them, but the Armour car you can load for any point. If you have a buyer come along from the East you can sell it to him, or one from the West and you can sell it to him with the assurance that that car will go.

Senator KEAN. What is the capacity of the Armour car?

Mr. GLEASON. In bushels? We usually load about 400 bushels, and that is about 50 pounds to a bushel.

Senator KEAN. For that load, how much do they charge?

Mr. GLEASON. For the icing?

Senator KEAN. Yes.

Mr. GLEASON. Their rate last year was $30 to Minneapolis and St. Paul, $25 to Chicago, $25 to Detroit, $40 to Rochester, $50, I think, to New York, and $55 to Boston. That was their schedule rate.

Senator KEAN. And the only complaint you hear in your part of the country is on the transportation of grapes?

Mr. GLEASON. Yes.

Senator KEAN. Not on other fruits?

Mr. GLEASON. Just the grape business. They do not need as good refrigeration, but they made some kick. It is not general; it was only now and then, and generally from those who are small shippers or growers.

Senator KEAN. Your business has increased very much, I under-

stand, since you have the Armour cars, or this improved service to ship in?

Mr. GLEASON. Yes; in 1900 the township of Hartford, Michigan, in which I live, had 27,000 bearing peach trees. To-day they have 129,000 bearing peach trees, and I candidly believe that it is because of the system which we have had which caused the growth.

Senator KEAN. Is there anything further that you wish to say?

Mr. GLEASON. Nothing further.

Senator KEAN. You are excused.

STATEMENT OF MR. F. S. GURNEY.

Senator KEAN. Please state your name, place of residence, and occupation.

Mr. GURNEY. F. S. Gurney. I live at Hart, Oceana County, Mich. I am a fruit grower, partially.

Senator KEAN. What kind of fruit?

Mr. GURNEY. Peaches, plums, and pears. I have been in business for about thirty years.

Senator KEAN. What is the extent of your business?

Mr. GURNEY. I have about 70 acres.

Senator KEAN. What is the extent of your shipments?

Mr. GURNEY. I could not say, but then I know the condition of the country there. All along the shore there there are small fruit growers having from 20 to 50 acres each; no very large orchards, but a great many of them, and probably 10 or 15 cars a day up to 20 cars, and I wish to say that, in my opinion, the fruit growers should be the ones that would say whether these rates by the Armour Car Lines are exorbitant or not. If a coal miner should come to you and say, "Here, the Armour Car Lines are charging an exorbitant price," or if an iron miner should come and say that, you would begin to figure around to see why he was here. Now, I want to say to you that this league of commission merchants never paid one dollar of this excessive freight that they complain about. The fruit grower and the consumer paid, mostly the fruit grower, and if there is any complaint I claim that the fruit grower should make it instead of these commission merchants.

Senator KEAN. You think they are something in the nature of philanthropists?

Mr. GURNEY. I think this, that there is some reason why the commission merchants are here. As I said before, if a man having an iron or a coal mine should come here and complain that this is excessive freight, you would begin to figure around to see why he was here. When we have this Armour car service a buyer—15 or 20 or 30 of them—comes to our place. In the first place, they look the country over to see how many peaches there are, and they determine about how many cars, three or four or five hundred cars, or whatever there are, of peaches and plums they will need. Then the next move they make is to go to the car lines to see how they can get these peaches away. Now, when the Armour Car Lines say to them, "You can have all the cars you want, and we will drop those peaches in Boston, Hartford, Conn., or Albany, Utica, or Syracuse, or Minneapolis in perfect order, and if we do not we will pay for it," they know what

they can do. Then they come to me and they say, "I will give you so much a bushel for your peaches or plums or pears, delivered at this station."

Now, do you see the point? If I sell my peaches, and if all my neighbors and the whole township and the county as well, sell our peaches to these men that come to buy, why, the commission man does not handle them, does he? Now, every dollar that has ever gone into those peaches the peach grower puts in. He has to educate himself when he buys the land, and he has to put money in it when he plants his trees, and he has to put in the money when he kills the San Jose scale, and he keeps putting in money until those peaches land on the desk or the counter stall of the commission man. That is the reason the commission men are here. Did you ever consider when these commission men are talking to you that they never paid one dollar of these excessive freight charges or icing charges that they talk about? I do not represent the people of western Michigan, but I am here to say that we have a very long strip of country along the west shore of Lake Michigan that raises large quantities of fruit, and I am here to say that I voice the sentiments of 90 per cent of the fruit growers of western Michigan when I say that the Armour service is the best service we have ever had. I would rather pay $50 or $60 for the icing charges on their car to Boston, when I know that that car is going to land there in good condition, than to pay $5 or $10 for a poor service and then lose a car of peaches.

Senator KEAN. Then you are satisfied with existing conditions?

Mr. GURNEY. We are satisfied. I want to say this further, that those rates are published, and every man knows what the icing charges are, what his freight is, and we are perfectly satisfied; and, further than that, if you should make a ruling, or recommend the Interstate Commerce Commission to make a ruling, that the charges are too high for this icing, and the Armour car people should say, "We can not furnish it for any less," why, it would ruin me and our whole country, because we would be compelled to go to Chicago and Milwaukee and go into the hands of the commission men, and there would be a glut there every day. We had the Armour Car Line four or five years, and in 1899 and in 1900 the commission men, not the growers, made such a howl about it that the Armour Car Line would not come in and our railroad would not contract with them, and for two years we did not make a cent. We went to the Armour Car Line ourselves. We appointed a committee to go to Chicago to get them to come back, and they told us what they would do, and we said, "That is what we want." Now we get good service. Further, our road—the Pere Marquette road—a year ago had only 110 refrigerator cars. Our town alone on the 1st of August would have every one of those cars out in five days, and where would we be?

Now, when the Armour Car Company comes that way, why, you can get all the cars you want, they say, and we get them when we want them. Understand, if you have a car of fruit coming on—say 800 bushels of Crawford peaches—you would be a little bit anxious to know whether you were going to have the car when you wanted it. You can not use it if it is delivered next week, but you have got to have it to-morrow. Now, we get it from the Armour Car Company every day. We get the cars when we want them, and we are positive we know how that car is from the time it leaves our station until it

gets to Boston. We know when it gets to Grand Rapids that it has been reiced, if reicing has been necessary, and when it gets to Buffalo and to Albany we know when it gets there, and when it gets to Boston we get a report that the car has arrived in good condition and is all right.

Senator KEAN. That is a very good statement, and the committee is very much obliged to you, Mr. Gurney. You are excused.

STATEMENT OF INTERSTATE COMMERCE COMMISSIONER PROUTY.

The CHAIRMAN. I will state that the committee has invited the members of the Interstate Commerce Commission to come before them and make any statement that they see fit on the pending question. Mr. Knapp, being the chairman, will be heard first.

Commissioner KNAPP. Mr. Chairman, when it was understood that the attendance of the Commission would be desired on the first part of this week one of my associates, Commissioner Prouty, made an engagement which compels him to leave Washington to-morrow morning for an absence of some days. For that reason I ask that he have the first opportunity to present any statement that he desires to make or to answer any questions the members of the committee may desire to ask.

The CHAIRMAN. Very well. Mr. Commissioner Prouty, you may proceed.

Commissioner PROUTY. Mr. Chairman, the Commission is here this morning because you, as the chairman of the committee, requested it to be here, and I come here as a member of the Commission for that reason. Since these hearings began I have been absent from Washington almost all the time on official business. My time when in Washington has been so engrossed that I have had no opportunity to examine the testimony given on these hearings. I am not in any way competent to discuss it. I am not competent to reply to anything which has been said, and I do not desire to take up your time. It would not be profitable for me to take up your time in any general discussion of this question. I am here, as I indicated, at your request, and if the committee desires to ask me any question in reference to what has been done, in reference to what has not been done, in reference to why it has not been done or why it has been done, I shall be glad to answer that question, but unless you have some question to ask in reference to something I do not care to trouble you.

Senator CULLOM. How long have you been a member of the Commission?

Mr. PROUTY. I was appointed on the Commission in December, 1896. I succeeded Judge Vesy, who succeeded Commissioner Walker, afterwards chairman of the Atchison board.

Senator CULLOM. The committee has now been taking testimony on this subject for about a month, and the chief point about which there seems to be a difference in the country, and possibly in the committee—I do not know how that is, for we have not made known our views to each other—is the question of whether the Commission, either as it is or as we might see proper to make it hereafter, should be given powers in addition to what it already has, and on being called upon by a locality, or at the complaint that a

rate was not satisfactory, and the Commission should respond to the call and determine that the rate was not reasonable and so declare and order, that in addition to that the Commission should have the power to determine what rate would be reasonable and enforce its order on that decision.

Mr. PROUTY. I do not understand that the Commission at the present time has any power in the premises. In my view of it the defect in the present law is that neither the Commission nor the court nor anybody else has any power to say, with respect to the future, whether a rate is reasonable or unreasonable—whether a discrimination is due or undue—and therefore we have no power to make any order in the premises.

Senator CULLOM. Well, ought you to have?

Mr. PROUTY. My views on that subject have been stated in repeated reports to Congress.

Senator CULLOM. We would like to hear you discuss that question.

Mr. PROUTY. Mr. Senator, I believe this: I have said it a great many times and I can say it in a word again, that there must be, and especially in view of the combined railway influence at the present time, some tribunal somewhere which has power to judge between the railway and the public. I do not mean by that that I should have or that anybody else should have any power over the property of the railway. I think the railways should make their own rates. I think they should be allowed to develop their own business. I have never advocated any law and I am not in favor of any law which would put the rate-making power into the hands of any commission or any court. While it may be necessary to do that some time, while that is done in some States at the present time, while it is done in some countries, I am opposed to it, and I could give, if it were material, the reasons why I am opposed to it. You have heard them already from other parties.

Senator CULLOM. We would like to hear them from you.

Mr. PROUTY. And I say this, that there must be some tribunal which can determine whether the railroad has so used its property as to destroy my property. If a railroad having the absolute monopoly imposes upon me an unjust and an unreasonable rate it takes my property. If the railroad, having power, imposes a discrimination which shuts up my coal mines or shuts down my mill it takes my property. Now, there must be a tribunal somewhere which can judge between me and the railroad, which can say whether the railway is using or has used its property in a legitimate way with respect to my rights and my property rights. Now, as a matter of fact I go a little bit further. I say that the only way in which the public can be protected is by acting directly upon the railroad rates. The thing which hurts is the rate. The thing which must be acted upon is the rate. In some way or other you must revise the action of the traffic manager. Now, if you can do that by a court, all right. As I understand the Constitution of the United States it can not be done by a court. A court has no power and can be given no power to determine a rate for the future. Therefore, you must bestow that power, you must confer that power upon some commission. Now, when you ask what commission and how that commission should be constituted and to what extent the orders of that commission should be reviewed

you come to a field about which my own ideas, although I have thought a great deal about the subject, are not altogether clear. The Interstate Commerce Commission at the present time is an executive body. It is charged with the duty within certain limits of executing this law. It is our duty to enforce the criminal features of the law.

Now, I am perfectly clear in my own way that those powers should be taken away from the Interstate Commerce Commission. In the first place, a body of five men is too cumbersome a body to act as an executive. It does not do things. It does not get anywhere. In the next place, I do not think you ought to combine in the same tribunal or the same body the executive, the administrative, and the judicial functions. That is my attitude as a Commissioner. If it is my duty as a Commissioner to investigate, to unearth criminal violations of the law, I think I am very likely to get into a frame of mind which unfits me to dispassionately pass upon the rates made by the defendant; so I say now, and I have always said, that you should take away from the Interstate Commerce Commission and put either in the Department of Justice or in the Department of Commerce and Labor what I may call the executive functions of the Commission. Now, the Commission has certain judicial functions. It is allowed in certain cases to award damages. I think those judicial functions should be taken away from the Commission. I do not think that the Commission as now constituted, hearing cases as it hears them, receiving testimony as it receives testimony, ought to be charged with the judicial duty of trying a damage suit. There are certain instances where the only thing to be done is to make a computation between the rate charged and the rate paid, where the Commission might with propriety make the computation and make the order; but where the process goes further, where it becomes necessary to determine damages, to award damages, the work of the Commission is apt to be unsatisfactory. When it is done, it amounts to nothing. The order of the Commission is merely prima facie. The same suit must be tried over again, and I believe it would be better to try that suit in the first instance in the courts. It is quite likely that you ought to permit suits to be tried in the State courts for violations of this statute, if that can be done, and I rather think it could be. A man, perhaps, ought not to be required under all circumstances to go into the Federal court; but you gain nothing by his bringing the suit in the first instance before the Commission, and it seems to me that you should take away the executive and the judicial duties, and leave the Commission with simply its administrative duties.

Senator CULLOM. You have, I think, taken up these damage cases, as you call them, and disposed of them, have you not, as a Commission?

Mr. PROUTY. Yes; the Commission heard before I came on to the Commission the case of the Independent Refiners' Association putting in issue rates on petroleum from certain points in Pennsylvania to various points in New England. In that case the Commission awarded damages to a considerable amount. Suit was brought in the circuit court and the complainant recovered his damages. That matter was taken up to the circuit court of appeals, and the circuit court of appeals has just reversed the decision of the circuit court and virtually held that no damages can be recovered. Now, in that

case it would have been very much better for the complainant if he had been obliged to first go into court.

Senator CULLOM. Did the court decide that no damages could be recovered on the merits or on account of the fact that the Commission had no foundation for the case?

Mr. PROUTY. It would not be profitable for me to go into that feature of the case; but the court decides for a great many reasons that they can not recover—not because the Commission made any error in determining whether the rate was unreasonable or reasonable, because that question did not go to a jury, but because the Commission awarded damages against a receiver when they ought not to have been awarded, and for other reasons of that kind.

Senator CULLOM. You have the power now, as a Commission, on complaint to investigate and determine whether the charges were reasonable or unreasonable, and when you determine that they are unreasonable you make an order to that effect, do you not, or what do you do?

Mr. PROUTY. These questions arise before us in a great many ways. There are a great many different kinds of questions. There is the question pure and simple, Is the rate unreasonable? There is the question, Is this a discrimination between localities? There is the question, Is this a discrimination against commodities? I believe that in every case the ultimate question reduces itself to this: What shall the railroad charge for the future? I think that is true in every case. Now, we have just gotten back from Chicago, and we have heard a series of cases there, and I might take those cases as illustrations. One case involved refrigeration charges on peaches, plums, and grapes shipped from Michigan. The only question in that case is the amount of the refrigeration charge.

Senator CULLOM. Was that against the railroad or against the private car line?

Mr. PROUTY. Well, the railroads were brought in as parties and the private car lines were brought in as parties. If we make any order it must be made against the railroad, and I think the Commission will be disposed to hold that the refrigeration charge is a part of the transportation charge which the railroad must publish and for which it is responsible; but we have no power to say what that refrigerator charge shall be. Our only power is to say that the refrigeration charge is unreasonable, and I desire to call the attention of the committee to the fact that the Supreme Court has never yet decided that we had the power to say that.

Senator CULLOM. Even that they were unreasonable?

Mr. PROUTY. No; not as applied to the future.

Senator DOLLIVER. Do you have an additional power to compute and find the damages that they have suffered by reason of that violation of law in the same proceedings?

Mr. PROUTY. We do, not exactly in the same proceeding, but in the same connection, compute the damages which a shipper has sustained between the payment of what we find to be a reasonable rate and the payment of whatever rate was paid.

Senator DOLLIVER. Does the original interstate-commerce law allow that to be done in the same proceedings?

Mr. PROUTY. They are really two distinct proceedings, and the

orders are two distinct orders. The order to cease and desist from making a certain charge must be enforced in a court of equity and the order to make reparation must be enforced in a court of law, where a jury trial can be had. Therefore the Commission makes two separate orders. We make one order to cease and desist and another order for reparation.

Senator DOLLIVER. If you pass both orders over to the court in the same proceeding——

Mr. PROUTY. Both orders are made in the same proceeding. A proceeding to enforce those orders would not be brought in the same proceeding in court. One would be a proceeding in equity and the other would be a proceeding before a jury. As I started to say, you take this bunch of cases that we heard in Chicago, and in every single case the question is, What rate shall be charged for the future? This Michigan case was one. Now, another case was this: The mills in western Nebraska grind corn meal, which they use in the Northwest. The corn out of which they grind it is raised in Nebraska. The rate on corn and corn meal from Nebraska to the Northwest has always been the same. Recently the rate on corn has been reduced without a corresponding reduction of the rate on corn meal. Now, the Nebraska miller alleges that the reduction of the rate on corn without a corresponding reduction of the rate on corn meal puts him out of business. His mill was built to grind for that territory. If he can not grind for that territory, it virtually amounts to a destruction of his mill, the confiscation of his property. Now, there is no way in which you can decide that question except by determining what rate shall be applied for the future.

Senator DOLLIVER. Could you not get an order of court requiring that discrimination between those particular descriptions of traffic shall cease?

Mr. PROUTY. Suppose the court were of the opinion that the differential of 10 cents was too wide, but that a differential of 5 cents might properly be applied. What order would the court make?

Senator DOLLIVER. It would depend on the proceeding. Suppose the complaint was that any discrimination in excess of 5 cents, or any discrimination at all, was illegal. Could that be brought before the court by a direct proceeding?

Mr. PROUTY. If the complaint was that any discrimination at all was illegal, and if the courts were of the opinion that there ought to be no discrimination at all, I am not prepared to say that the court might not enjoin the making of a discrimination.

Senator DOLLIVER. Has that form of proceeding ever been adopted by the Commission in cases of complaint about discriminations between these descriptions of traffic?

Mr. PROUTY. I do not think so. I do not see that anything would be gained by adopting that form of proceeding.

Senator DOLLIVER. It would, if the court would make an order requiring the discrimination to cease, and it would appear to be a fairly effective way to reach it.

Mr. PROUTY. Suppose the railroad ought to have the right to make that discrimination of 5 cents and the court ordered it not to make any discrimination at all, would that be just to the railroad?

Senator DOLLIVER. You would not suppose the court would make such an order in that case.

Mr. PROUTY. Then the court makes no orders to cease and desist, and the result is that you go along charging the 10 cents.

Senator DOLLIVER. Do you say that the court could not make an order to cease and desist about a discrimination of 5 cents?

Mr. PROUTY. Certainly I would. In order to do that the court must determine the differential for the future, must it not?

Senator DOLLIVER. I do not desire to answer the question.

Mr. PROUTY. Certainly I would say that. That is what the Supreme Court has held with reference to orders of the Commission. The first order this Commission ever made in respect to a rate was made in the case of Evans against the Oregon Navigation Company, or the Oregon Short Line—I forget which. The thing involved there was the rate on wheat from Walla Walla to Portland. The rate in effect was 30 cents. The rate the Commission ordered was 23½ cents. What the Commission did was to order the defendant to cease and desist from charging more than 23½ cents. That was the form of the order which the Commission made, and it is the form of the order which the Commission has always made. That order was complied with by the railway, but the Supreme Court of the United States has since held in subsequent cases that the Commission had no power to make that sort of an order, because that kind of an order of necessity involved a determination that 23½ cents should be charged for the future. Now, an order of the kind that you mention——

Senator NEWLANDS. In what case was that last decided?

Mr. PROUTY. In all these cases. In the Maximum Rate Case the form of the order was that the carrier should desist and cease from charging more than a certain sum. That is the order we always make. Our order formerly was that the carrier shall cease and desist from charging more than the amount which we determined was reasonable. At the present time the order is that the carrier shall cease and desist from charging the present rate, and along with that goes a recommendation as to the rate which the carrier shall charge.

Senator NEWLANDS. Do I understand that some of the counsel for the railroads have insisted that in the case put by Senator Dolliver the court could give full relief by enjoining a charge above a certain amount, and that that would belong to the equity side of the court in order to avoid a multiplicity of suits for damages and to get adequate relief? Of course, if that is so, that power would be exercised by the court entirely regardless of the question as to whether or not the Commission had the power to fix the rates for the future. The remedy there would be to prevent an irremedial injury and to prevent a multiplicity of suits. That is the contention, I understand it, of some of the lawyers of the railroads. Is not that your understanding?

Mr. PROUTY. The court in Mississippi decided that the court had no such jurisdiction. Judge Spear decided in Georgia that the court had that jurisdiction, and the court decided in the Missouri Pacific Case that under the statute—under the Elkins bill—an action would now lie in the name of the United States to restrain a discrimination, but all that does not reach the point. The question is, Can the court apply a remedy? Now, my proposition is that the court, by the decision of the Supreme Court of the United States, has no right to fix a rate for the future. There is no question about that. That has been

decided. It must be accepted as axiomatic. My second proposition is that the court can not fix that differential without fixing a rate for the future. If the court says that for the future the carrier shall be enjoined from charging more than 5 cents difference between corn and corn meal, it determines that 5 cents shall be the differential for the future, and that thing the court has no power to do.

The CHAIRMAN. What would you suggest as the remedy right there; what amendment would you put in the existing law to make the enforcement of that effective?

Mr. PROUTY. The trouble now is that you are endeavoring to administer this law by the court. That can not be done. You may take every case that stands on the docket of the Interstate Commerce Commission, you may take every case that has been decided by the Interstate Commerce Commission for the last eight years, since I have been on that Commission, and the thing can not be corrected unless you, in effect—you might by indirection—fix the rate for the future, and you must create a commission and you must give it that power.

The CHAIRMAN. Would you leave the right to review the finding and judgment of the Commission?

Mr. PROUTY. I have never advocated the exercise of that power by the Commission without the right to review.

The CHAIRMAN. When the court reviews it and comes to a conclusion, would not that indirectly fix the rate?

Mr. PROUTY. Just what the court can do in that matter is an embarrassing question, and a question which no man can answer with very great certainty. The Attorney-General has told you gentlemen, I think, that the court has no power to review an order of the Commission. Now, I entirely agree with that proposition. I have always insisted that the Commission must, in the first instance, fix the rate. It has always seemed to me that a court could review the decision of the Commission.

The CHAIRMAN. In the first instance the railroad fixes the rate, and you then review that.

Mr. PROUTY. Yes.

The CHAIRMAN. You say the Commission fixes the rate?

Mr. PROUTY. Our power is this, or ought to be this: The fixing of a rate is an administrative duty. The altering of that rate is an administrative duty. Now, an administrative duty can not be discharged by the court. The court may determine whether a rate is reasonable or unreasonable for certain purposes. It may determine whether a rate is reasonable if I, having paid the rate, sue the railroad company to recover. It may determine that; it may submit that to a jury. It may determine whether the rate is reasonable or unreasonable under the fourteenth amendment to the Constitution of the United States—that is, for the purpose of enforcing the provisions of that amendment. It has never been decided by any court—the contrary has been decided, as I understand it—that the court has power to determine whether a rate is reasonable or unreasonable for the purpose of fixing that rate for the future. Now, I say it is a very embarrassing question—it is a very doubtful question—what the power of the court is under the fourteenth amendment. That amendment provides that no person shall be deprived of his property without due process of law. The railway rate is property. It is all the property that the railway has. The rest of its property is

good for nothing unless it can charge a rate. Now, it has always seemed to me that when a rate was fixed, if that rate was an unreasonable rate it deprives the railroad company of its property pro tanto. It is not necessary that you should confiscate the property of a railroad; it is not necessary that you should say that it shall not earn 3 per cent or 4 per cent. When you put in a rate which is inherently unreasonable you have deprived that company of its rights, of its property, and the circuit court of the United States has jurisdiction under the fourteenth amendment to restrain that.

Senator DOLLIVER. Does that view correspond with the decisions of the court?

Mr. PROUTY. That is as I understand it.

Senator DOLLIVER. I think the Attorney-General says that the review of the rates does not go to the question of whether it is reasonable or not, but goes simply to the question of whether it confiscates the railroad company's property.

Mr. PROUTY. Well, I read the opinion of the Attorney-General hastily. Of course I have no desire to assert any opinions in opposition to that of the Attorney-General, but I have looked at these cases a great many times and I can only come to this conclusion, that a railroad company is entitled to charge a fair and reasonable rate. It is entitled under the fourteenth amendment to charge a fair and reasonable rate, and if any order of a commission, if any statute of a State legislature, takes away that right, the fourteenth amendment protects the railway company. To continue, the legislature has certain powers over the rate. For example, the legislature may say to a railway company, you shall create no discrimination between localities. The legislature may say to a railway company, you shall in all cases charge no less for a long haul than you do for a short haul. Now, when that has been said the railway company must comply with that enactment of the legislature.

The Supreme Court held that the State of Kentucky had a right to say to the railroads in that State, with respect to traffic within the State, that the long and short haul clause should be absoluely observed. The railroads came to the court. They said: If you compel us to observe this law, it ruins us; it confiscates our property. But the court, as I understand it, rejected that argument and said: It makes no difference; the legislature of Kentucky may prescribe that rule and you must obey it. Now, I take it that the Congress of the United States may say, with respect to interstate transportation, that in no case should less be charged for the long haul than for the short haul. It would be a very foolish thing to say; it would produce a very disastrous effect upon railways in some parts of this country; but I think Congress might say it, and if Congress did say it the railways would be obliged to comply with it. Now, there is another thing that Congress may do. It exercises and can exercise a very wide supervisory power over rates. For example, a railroad company can afford to make a lower rate for 100 pounds, if it receives a train load a day from a factory, than it can if it receives a single carload a day from a factory. Nevertheless I think that Congress, or a commission acting under the authority of Congress, might say that the railway shall accord the same rates whether the shipment is in one carload or in fifty carloads. Otherwise you con-

centrate the business of this country in the hands of a few large corporations—certain kinds of business.

Senator DOLLIVER. Do you think that would be a wise provision of law?

Mr. PROUTY. That no lower rate should be made for a train load? Well, now with respect to that, the Commission has held that such is the law now. The Supreme Court of the United States, as I understand it, has held with respect to passenger traffic that such is not the law. In point of fact, the railroads of this country do ordinarily apply the same rate per hundred pounds, whether the traffic moves in carloads or in train loads.

Senator DOLLIVER. But they do not go below a carload?

Mr. PROUTY. No; if they were to apply any different rule it would create an insurrection which you gentlemen would hear from from all parts of the country. I think there are, however, certain cases in which railroads ought to, and may, with perfect propriety, make a lower rate by the train load than by the carload, and I believe they ought to have that right. Now, it seems to me that Congress would have the power to say—they may say it by absolute enactment or they may delegate that power to a Commission—ordinarily you shall make the same rate per 100 pounds, whether one carload or fifty, but you may, under these peculiar circumstances and conditions, make a lower rate by the train load than by the carload.

Senator DOLLIVER. Do you have in mind any condition of that sort?

Mr. PROUTY. Yes; the transportation of live stock. I think there are many instances where railroads might, with propriety, make a lower rate for a train load of live stock than they make for a single carload of live stock. I think it would be for the interest of the shipper of live stock if they had that privilege. I think in many instances the railroads should have the right to make a lower rate for the transportation by the railroad of a train load of perishable fruit or other commodity than it makes for a single carload, and it is for the interest of the public that they should have that right. Take another illustration: A railroad company can transport kerosene oil or petroleum much more cheaply by the gallon in a tank car than in a barrel. Nevertheless, I think the people of this country might, through their Congress or through a commission, say that the railroads of this country shall extend the same rates by the gallon, whether kerosene oil is transported in a tank car or by the barrel.

Senator CULLOM. Do you think those provisions ought to be put in the statute?

Mr. PROUTY. I am not saying now that they ought to be put into a statute. I am illustrating to you the power which Congress has and which the court can not refuse. I think that Congress may say that a railway shall earn less in proportion to the service from the transportation of coal than it earns from the transportation of something else. Now, within those limits the power of Congress is supreme. Within those limits the power of a commission created by Congress is supreme, and with those things the court can not interfere. The court can say, on the whole you are not giving to this railroad company a reasonable return; but the court can not say that simply because we have required, or Congress has required, a railroad to transport coal for less in proportion to service than silk that the

rate on coal is unreasonable. In my view of the matter the power of the court is something like this: The making of a rate is a legislative act in essence. The court has the same power over that legislative act that it has over any other legislative act. Just as it can declare a law which Congress enacts unconstitutional, so it can declare a rate, put into effect by Congress or put into effect by the Commission, void. If Congress were to enact that the Baltimore and Ohio Railroad should transport passengers from Washington to Baltimore for 5 cents apiece, I take it that is an unconstitutional act. That does not allow the railroad proper remuneration for its service. That could be set aside by the court. But if Congress were to enact that service should be rendered for 40 cents apiece, it is not at all clear, although the rate would be too low, that it could be set aside by the court. That may be as much as the railroads get at present on the whole. It seems to me that a court should presume in favor of a rate exactly what it presumes in favor of a statute. It should presume it is reasonable; but if it clearly appears to be unreasonable it should set it aside, and should do that although the railroad is making 100 per cent on its investment. From what I have seen of the operation of this right under the fourteenth amendment and the acts of State commissions I have felt that it did not afford to the railroad the full measure of protection which it deserved, and I have advocated the creation of a special court, which should be an expert court, upon the theory that the court may exercise, if it were given the power to review the lawfulness of a rate, some additional power to what it could exercise under the fourteenth amendment.

Senator DOLLIVER. Could we, by creating a special court, give to it any special powers that could not be by law conferred upon the existing judiciary of the country?

Mr. PROUTY. As a matter of theory, as a matter of course, you could not, but as a lawyer you know that the courts do in the process of time some things that it was not originally intended they should do.

Senator DOLLIVER. If I could see the same latitude in the jurisdiction of a court in hearing one of these appeals from the order of the Commission that you have expressed there, it would greatly simplify this problem; but the way it has been presented to us is that the court would consider nothing but reasonable earnings, the reasonable surplus to be laid up against evil times, or a reasonable business administration of the property, and confine itself to the question of whether the rates fixed by the Commission took the property of the company without compensation, without due process of law.

Mr. PROUTY. If it is too low it does take it without process of law, because the rate is the property.

Senator DOLLIVER. No, the rate is a mere expression of the use of the property; and the rate could be brought down until the property was earning very little—not enough to pay dividends and not enough to maintain a surplus fund or to keep up improvements or a great variety of expenses beyond the mere payment of dividends and still be short of taking the property. That is the view that has been presented to us.

Mr. PROUTY. Of course the court can not review the order of the Commission in so far as that order is discretionary; in so far as it

is a matter of judgment; in so far, in other words, as it is legislative. It can only review the lawfulness of the order; but it has seemed to me that a special court, charged with the duty of reviewing the lawfulness of the orders of the Commission, would exercise a most potential influence upon the rates of this country. When the Supreme Court of the United States decides that the rates put in effect by the Texas commission are in violation of the fourteenth amendment, they of necessity inquire whether those rates are reasonable. They do not inquire with reference to the future, but they inquire, Are those rates reasonable? When the court inquires whether one of the orders of the Commission is justified, it must inquire whether the rate is reasonable for the time being; and while I freely admit that the thing accomplished may be an expression of opinion as to a rate to be charged for the future I have felt that under that kind of a provision the jurisdiction would be exercised by a court. It might not. Your opinion is worth more than mine. I have simply given to you the impression which I have had.

The CHAIRMAN. Where do interstate railroads, by combination or consolidation of lines in three or four States, making it one combination, get the power to charge rates.

Mr. PROUTY. I do not know that I understand.

The CHAIRMAN. Every road is incorporated originally in a State, and by uniting two roads or three roads or four roads in several States we get an interstate railroad.

Mr. PROUTY. Yes.

The CHAIRMAN. Now, the power to charge—the franchise—the power to make the rate, comes from what source?

Mr. PROUTY. Why, each railroad is chartered by the State, and it is allowed to charge a reasonable rate in that State. In the next State it is chartered and given the same power. Now, when you put those two lines together that power is exercised in the State of Illinois under the power granted there and in the State of Indiana under the power granted by that State. The States, in forming this compact, which makes the United States of America, have given up certain of their powers to the Federal Government. They have given up to the Federal Government the power over interstate commerce on those railroads.

The CHAIRMAN. They surrender the power when they allow the combination—that is, as to the interstate charges and the operation of the roads.

Mr. PROUTY. I do not think the State could decline to allow the interstate movement.

The CHAIRMAN. The States can not inquire into or correct a through rate.

Mr. PROUTY. No; that must be done by Congress.

The CHAIRMAN. And Congress gets that power how?

Mr. PROUTY. By delegation from the States, under the commerce clause. The States have said in the Constitution, by subscribing to it, that Congress shall have the power over interstate commerce. They have thereby given up the power which they might otherwise exercise over a railroad or over interstate transportation.

The CHAIRMAN. This combination and consolidation which is permissible under the laws makes an interstate road. Is that a legislative act?

Mr. PROUTY. You mean the making of a rate?

The CHAIRMAN. Yes.

Mr. PROUTY. Certainly. I say a legislative act—it is an administrative act.

The CHAIRMAN. It is a legislative act so far as the power is derived from some source to fix it.

Mr. PROUTY. If Congress should fix the rate, that would be a legislative act.

The CHAIRMAN. The fixing of a rate, then, by an interstate road is by the consent of the public?

Mr. PROUTY. Yes.

The CHAIRMAN. And by the carrier?

Mr. PROUTY. Yes; as I understand it.

The CHAIRMAN. But in the State, when it incorporates a railroad, the power to make rates is delegated and there is a power conferred upon the railroads to make rates in the States.

Mr. PROUTY. You mean the United States has conferred no power which corresponds to the State?

The CHAIRMAN. No.

Mr. PROUTY. And I say when the State of Illinois creates one railroad and gives it that power, and the State of Indiana creates another railroad and gives it that power, that it is not within the power of either the State of Indiana or the State of Illinois to say that those two roads shall not engage in interstate business and make interstate rates, and those interstate rates may be higher than the sum of the local rates. I have before me to-day a complaint received from a gentleman who was traveling from Fernandina, Fla., to Savannah, Ga. He bought a ticket from Fernandina to Savannah and paid $5 for it. The gentleman who rode in the same car with him and in the same seat bought his ticket to a little town located on the border between Florida and Georgia, and when he got to this little town he got out and bought another ticket, and he got through for $3.28, I believe it was.

The CHAIRMAN. Now, how would you constitute the Commission, and what powers would you give it in the interests of the public to correct the evil abuses of extortionate rates? What powers would you confer on that Commission? Just explain that to us from your large experience in viewing these questions.

Mr. PROUTY. I expect that if I were to give you my honest opinion about that I would say that you ought to take away from the Interstate Commerce Commission all its executive work. I have already said that. You ought to take away all its judicial work, and I do not know, but I would say that you ought to go one step further. Now, at the present time the Interstate Commerce Commission receives a complaint. That is an informal complaint. It serves that on the railroad. It endeavors to persuade the railroad to correct that rate. It is our practice at the present time to say to a complainant, "if the rate is not corrected, if you desire to proceed with this matter, we will formulate a complaint and send it to you."

The CHAIRMAN. Whether you believe or not the complaint was well founded?

Mr. PROUTY. If I did not believe the complaint was well founded, if I did not believe there was a fair question, of course I would tell the complainant that I did not think he had a case; but if I thought

s case was well founded, or if, after I told him, I did not think he ıd a good case, and he insisted that it was a good case—as a com- ainant did the other day (I wrote to him that I did not think he ıd a complaint, and he said he thought he had, and he thought he uld convince my associates that he had, and would like to have a mplaint sent, so I instructed to have it sent, and I think it has been nt)—but whenever a man wants to proceed with his complaint, the ıterstate Commerce Commission always formulates his complaint r him. The lawyers do not know how to do that. We just turn over to our assistant secretary, who has a force for that purpose, ıd he formulates the complaint and has it filed. There are some ses in which we go no further than that. Where the question is ıe of very general interest which, we think, ought to be heard in e interests of the public, we sometimes furnish a lawyer to develop e facts of the case. Now, I am inclined to think, if you could range this thing just exactly as it ought to be arranged, you would eate a bureau or a department—I do not say that a department ould be any too large for it—which had jurisdiction of railroads.

The CHAIRMAN. A department of railways?

Mr. PROUTY. A department or a bureau of railways. You would y all these informal complaints before the bureau of railways, and the bureau of railways thought a complaint ought to be formulated would be the duty of that bureau to file a complaint with the Inter- ate Commerce Commission, and I would create a commission whose hole duty it should be to hear and decide those complaints. You uld not find any men too good for such a commission; you could not ıd any too impartial men for such a commission; but I do not see ıy other way in which it could be done.

The CHAIRMAN. And have this bureau refer the complaint to the mmission?

Mr. PROUTY. In my opinion you have got finally to let a commis- on determine what these rates shall be, because the court can not it. In my opinion the decision of the commission must finally a long way toward being taken as right. In my opinion there no way in which you can protect the railroads of this country om an erroneous decision of that commission within pretty broad nits. Of course, there are limits within which you can and limits ithin which you can not. Anything outrageous can be stopped, ıything manifestly wrong can be stopped, but anything that is a ttle wrong or partly wrong I do not believe can be stopped. There no other way to do it. That is the way they do it in England, at is the way they are doing it in Canada, and that is the way you ıve got to do it here; and I believe you ought to create a commis- on and give it that duty and also take away from it entirely all ese duties which tend to make a commission a partisan body, and low that commission to decide those questions. There ought to be ough commissioners, so that the question can be heard and decided omptly.

The CHAIRMAN. If they reach a conclusion that a rate was too gh, would you have them make a substitute rate that would go mediately into effect and make that binding upon the railroads, ıd then within certain limits have that reviewed or not reviewed?

Mr. PROUTY. I think they must have the power to make a rate

which is binding upon the railroad, unless it can be reviewed under the fourteenth amendment.

The CHAIRMAN. As confiscatory?

Mr. PROUTY. Yes.

The CHAIRMAN. But outside of that you would not allow it to be reviewed?

Mr. PROUTY. I would allow it to be reviewed if it can be, but Senator Dolliver says that it can not be. As an Interstate Commerce Commissioner I would a great deal rather act if my acts were reviewed by some competent tribunal, but I want a tribunal which is engaged exclusively in that business, which will look at these questions as I do, which will appreciate them, or at least consider them, from the same standpoint. I do not mean that I would expect they would have the same opinion that I had about them, because I suppose they would not, but if they do not I am entirely satisfied. Give me a competent tribunal. You may take any three judges in this land, I do not care who they are, and let them hear these questions from one year's end to the other, let them become familiar with every condition which surrounds the railway transportation of this country, and I will, as an Interstate Commerce Commissioner, prefer to be reviewed by a body of that sort than to have the absolute power to make the rates without review, because I am conscious of the fact that I might make mistakes, and I think I might sometimes decide in favor of the public in that case where I would not in the other.

The CHAIRMAN. If you are satisfied that the difficulty can not be settled, that the dispute between the carrier and the shipper can not be reconciled, and in your judgment there should be a suit brought, why not bring that suit directly in the court rather than let the Commission take the time and have a hearing and then have that reviewed? Do you get the idea?

Mr. PROUTY. I do, entirely. You look at that from a practical standpoint, of course.

The CHAIRMAN. Yes; to prevent delay.

Mr. PROUTY. In some instances it would prevent delay and in some instances it would not. Let me give you a practical illustration. Now, you take the only case in which an application has been made to us to proceed under what is known as the Elkins bill. That was the Wichita sugar differential case. In that case the question at issue was the comparative rate on carloads of sugar from various points to Kansas City and to Wichita. Sugar is refined in the United States very largely on the Atlantic seaboard. When it is refined on the Atlantic seaboard it may get to Wichita in two ways. It may go to Kansas City and so on through to Wichita, or it may and frequently does go down to Galveston and go from Galveston by rail up to Kansas City, and in that way it goes through Wichita. In the first case the sugar travels 225 miles farther in going to Wichita than going to Kansas City, and in the second case the sugar travels 225 miles farther in going to Kansas City than in going to Wichita.

Now, a great deal of sugar is produced in Louisiana, at, I may say, New Orleans. The distance from that point of production to Kansas City and to Wichita is practically the same. A great deal of sugar is produced out on the Pacific coast. That sugar, in order to get to Kansas City, has to go through Wichita to Kansas City. Now, out of that very complicated situation there has grown up in the last

dozen years a bitter fight, and that fight has resulted in the application of all sorts of differentials between those points. The differential has sometimes been 15 cents. It has sometimes been nothing. It has sometimes been five or seven or eight, or whatever happens to be. On the 1st of January the railroads had entered into an agreement. They had arrived at some sort of an understanding by which that differential was fixed at 15 cents, and the people of Wichita applied to the Interstate Commerce Commission and asked to institute a suit under the Elkins bill for the purpose of correcting that discrimination.

I happened to be in the West at that time, and was the member of the Commission who saw the attorney for the Wichita people. I said to him, "This act provides that the Interstate Commerce Commission shall institute a suit if it has reasonable ground to believe that the present differential is wrong. I can not say that I have any reasonable ground to believe that the present differential is wrong. We have decided that the rate may properly be higher to Wichita than to Kansas City, and how can I say, without some investigation, that your rate is wrong, and how can I recommend the institution of a suit on that basis? Before I can do that we must have an investigation." I said to him, "You file a complaint with the Interstate Commerce Commission, and we will investigate your complaint, and after we have done that we will determine whether we will proceed under the Elkins bill or whether we will make an order and proceed in that way." I think his complaint was filed somewhere about the 16th or 17th of December. We had to be in Chicago on the 27th of December, and we heard the complaint then. We decided it in ten days after it was heard. We decided that they ought to apply a differential of 8 cents.

The railroads complied with that order. Now, if in that case the Interstate Commerce Commission had brought a suit, there would not have been any termination of that suit until it got through to the Supreme Court of the United States. The shippers at Kansas City were on one side and the shippers at Wichita were on the other side, and they were bound to fight it out, and in that case where the order of the Commission was complied with the petitioners got relief within a month, whereas in the other case they would not have gotten it within two years. Now, suppose the order had not been complied with. Suppose we had brought a suit to enforce the order. There is no reason why we might not have secured a judgment in the case of that suit exactly as quick as we could secure a final decree in the case of a proceeding under the Elkins bill.

Senator DOLLIVER. Was that an order within the present power of the Commission?

Mr. PROUTY. No; the order of the Commission was this. The Commission ordered that they cease and desist from charging the present differential of 15 cents and it recommended that a differential of 8 cents be substituted, and the railways accepted the recommendation and substituted that differential.

Senator DOLLIVER. Do you recognize the present differentials existing by consent of the public in the railroads as a beneficial and wise thing and something in the interest of transportation, or would you abolish them.

Mr. PROUTY. I do not think you could abolish them.

Senator DOLLIVER. Do you think that they are beneficial and in the interests of the public?

Mr. PROUTY. I think they are absolutely essential, yes. I was going to say that a differential sometimes means one thing and sometimes another. Generally speaking I think there must be a difference in rate between communities, and that that is in the interest of competition. You could not have competition without it.

Senator DOLLIVER. One other question and I am through. In adjusting the difference between localities situate on different railroads, don't you think that on the whole the railroads themselves on the ground having charge of the matter could adjust those differences?

Mr. PROUTY. Yes.

The CHAIRMAN. Better than the Commission?

Mr. PROUTY. Yes, I do; but I think there are cases in which numbers of the public who are injured should have some remedy, and in a case of that sort I believe the only possible remedy is to be applied through a commission.

The CHAIRMAN. Through a commission rather than through the courts?

Mr. PROUTY. I do not think the court has the power to apply it.

The CHAIRMAN. As to localities?

Mr. PROUTY. Certainly, as to localities. Now, as to whether in my opinion the railroad traffic men are not ordinarily better qualified than a member of the Interstate Commerce Commission to determine what these differentials should be between different points, especially different points on the line of that particular traffic man, I think that he in all cases ought to have that right, but that the right should be subject to supervision somewhere. I desire to give an illustration of that. I can best take all these illustrations right out of the files of the Commission, and I will take this illustration from the last case that we had in Chicago. A good deal of corn is raised in Texas, but not all that they consume there. A certain amount is bought in Kansas and sent down there. It is sometimes sent as corn meal and sometimes as corn and ground in Texas. The Texas mills have insisted that the railroads should make a lower rate on corn than they made on corn meal, and the Texas commissioners insisted that they should make a lower rate on corn than on corn meal for the purpose of allowing the Texas mills to grind corn.

This differential for the last ten years has been 3 cents a hundred pounds. On the 19th day of last February it was advanced from 3 cents a hundred pounds to from 7½ to 9 cents a hundred pounds by raising the rate on corn meal. One cent a hundred pounds is a pretty good profit in grinding that corn meal, and of course this change in that differential simply puts the Kansas miller out of business, shut up the mills, and they applied to the Interstate Commerce Commission to investigate that. On our hearing in Chicago these facts were developed: The Texas commission was proposing to reduce the rates on grain and the products of grain in the State of Texas, and they had issued notice that on a certain day they would have a hearing at the capitol for the purpose of determining whether these rates should be reduced. The millers of the State of Texas were asking

for this reduction in Texas rates. The railroads went to the millers of Texas and they said to them, "Is there anything you want here?" "Why," said the millers, "yes; we would like to have that differential between corn and corn meal increased; we think you ought to put the rate on corn meal up." The railroad said, "All right; you just stay away from that meeting down at Austin so that there will not be any excuse for the Texas commission, if it undertakes to reduce these rates, and we will raise this differential; we will raise the rate on corn meal to the rate on flour." The millers kept away from Austin—they kept their part of the bargain—and they stayed away, and the Texas commission was left without any support for their proposition to reduce the rates, and the railroads kept their part of the bargain and lifted up the rate on corn meal so that the differential was from 9 to 7½ cents, and that put the Kansas mills out of business. Now, I think in a case of that sort those Kansas millers ought to have somebody to whom they can go who has power to right that wrong. I do not believe those Texas lines have any business to do that thing.

Senator KEAN. That was all in Texas?

Mr. PROUTY. Oh, no, sir; the lines that did it were the lines that led from Kansas City to Texas—into Texas. Those were the lines that made the raise, but they did it at the request of their Texas connections. You talk about the confiscation of property. Could you have any more absolute confiscation of property than the confiscation of the property of those mills? You talk about autocratic action. Could you have any action that is any more autocratic than that? Is it not the duty of the United States Government to provide a tribunal somewhere which justly and fairly can judge between these Kansas millers on the one side and these railroad lines on the other side? And I want to say, Mr. Chairman, as emphatically as I can, that I utterly dissent from this proposition which has been sent broadcast over the country, that to give some tribunal that right is tantamount to investing that tribunal with the power to fix the interstate rates of this country. I want to insist that there is not the slightest analogy between the two propositions, and I want to make that as plain and emphatic as I can, because if to bestow upon the Interstate Commerce Commission that right is to clothe it with the right to make the interstate rates of this country, I am not for it; but it has not that right, it has not that power, and it is not analogous to that power.

Senator DOLLIVER. What is the objection to that general power?

Mr. PROUTY. Of fixing all the rates?

Senator DOLLIVER. Yes.

Mr. PROUTY. Well, now, I do not admit that the Interstate Commerce Commission——

Senator DOLLIVER. Mr. Stickney, of the Great Western Railway, has filed a paper in which he says that this piecemeal business is worthless to the public, and that nothing could be of any value to the public in that particular unless the power to adjust these schedules was placed bodily in this Commission.

Mr. PROUTY. I do not admit that a proper commission—and I do not think the present Commission is a proper commission—I do not admit that a proper commission, with the proper staff, could not

make the interstate rates of this country. I think they could, without any difficulty, but I have always believed, in the first place, that, as a matter of justice, the railroads should be allowed to fix their own rates. Our railroads are private property. The money has gone into those enterprises upon the implied understanding, at least, that they should have the right to manage them as they wanted. I believe they should be allowed to do that, subject only to this qualification, the same qualification which rests upon the use of every other kind of property in the world, that they shall manage that property within the law.

I think as a matter of justice it is the right of the railroad company to fix its own rate until by the fixing of that rate it injures the public, and then I think the public must interfere and stop it. That is the first reason. The second reason is that in my opinion it is for the interests of the public that they should fix their own rates. I think it is for the interest of the public that a railroad should have the right to develop an industry on its own lines. Let me give you an illustration of what I mean there, and I will take that from the last case we had in Chicago—another case, the case of the Meneshaw Wooden Ware Company. Lard tubs are used in great quantities on the Missouri River, and until of late they have been manufactured in Minnesota. A factory has been established at Tacoma to make them. Lumber costs less in Tacoma than it does in Minnesota, although labor costs a little bit more. Still the lard tubs can be produced much more cheaply in Tacoma than they can in Minnesota. The Tacoma people went to the Northern Pacific and said, "Make us a rate by which we can put those tubs into the Missouri River country." A rate of 85 cents was made, but that was not satisfactory, and finally a rate of 65 cents was made, and on that rate the Tacoma factory sells about half the lard tubs used in the Missouri River district.

It seems to me that Mr. Hanniford, of the Northern Pacific, should have the right to make a rate of that sort to develop an industry on his line, provided he does no injustice to anybody else, and I believe it is for the interest of the public that he should have the right to make that rate. The case came up in this way: While Mr. Hanniford's rates on those commodities from Tacoma to the Missouri River is 65 cents, his rate the other way is $1.35, and a complainant said that Mr. Hanniford ought to have made him just as low a rate from the Missouri River to Tacoma as he made from Tacoma to the Missouri River. That is the way the complaint came up; but my point is illustrated by the rate which Mr. Hanniford made to develop his industry. I think he should be allowed to do that, and that it is for the interest of the public that he should. In my judgment the railroad rates of this country to-day are lower than they would have been had they been made by any interstate commerce commission in the world. But I call attention especially to the fact that the influences which have forced down the railway rates of the United States no longer operate to a very great extent.

When I came on to the Interstate Commerce Commission eight years ago there was a most vigorous competition between the railroads in railway rates in all parts of this country. To-day that competi-

tion has disappeared. You have left the kind of competition that I refer to in some cases, but that competition only exists in peculiar cases and particular cases, and it is disappearing. You have heard, I expect, a good deal—I have not read these hearings so I do not know—about the force of market competition. That is the kind of competition I call attention to. It is a more subtle kind of competition than railroad competition is, because it can take place between the railroads which reach the same point from opposite directions, and that is not true where you have the simple railway competition between competing carriers, so to speak. But let me assume a case. St. Louis sells goods in Denver and Chicago sells goods in Denver. The St. Louis merchant says to the Missouri Pacific, "Make me a rate and I will give you some traffic." The Chicago merchant says to the Northwestern, "Make me a rate and I will give you some traffic." These two lines make the rate to Denver against one another, bidding against one another for the purpose of obtaining the traffic. It does not, as a general rule, increase the amount of traffic, it does not increase the amount of groceries consumed in Denver; it simply determines whether they shall start from St. Louis or Chicago, whether they shall go by the Missouri Pacific or the Northwestern. Now, then, if the Missouri Pacific and the Northwestern are owned by the same persons, what becomes of your market competition They raise that rate 2 cents a hundred pounds; the distribution of the traffic is exactly the same and your market competition is gone.

Senator DOLLIVER. Do you mean to say that that kind of competition between the Missouri Pacific and the Northwestern in a case like that has disappeared?

Mr. PROUTY. Certainly I do, to a very great extent. I do not mean to say entirely. I do not mean to say it has disappeared to the same extent that competition in the rate has, because that, for all practical purposes, has absolutely disappeared in the United States. I do not pretend to say that competition in facilities, market competition, has disappeared, but I say it is disappearing. Let me give you an illustration of that. I will take this from our own files. About the 1st of January, 1903, the rates from St. Louis and that territory into Texas were advanced. They were advanced to a higher point than they had ever touched before since the Interstate Commerce Commission existed, and we felt that it was our duty to investigate the question of those rates. This situation was developed: Articles consumed in Texas are purchased both in St. Louis and Chicago and also in New York.

Now, the rate from New York to Galveston and from Galveston to the interior towns of Texas, common points, as compared with the rate from St. Louis to Texas common points, determines whether the goods shall be bought in New York or in St. Louis, so that you have there market competition. It turned out that before this advance in rates from St. Louis into Texas an agreement had been made between the steamship lines which serve Texas and the railroads which carry that traffic into the interior by which the rates from New York were to be advanced to the same extent that the rates from St. Louis were to be advanced, and the traffic men testified that they could not and they would not have made the advance from St. Louis had not the

New York lines agreed to make the advance from New York. Just look on that map there and you will see across the southern part, from Georgia to the middle of Texas, a zone where yellow-pine lumber grows. There are mills all the way from Georgia to the middle of Texas, nearly 1,500 miles. Above the Ohio River and east of the Mississippi River and west of a line drawn from Pittsburg to Buffalo is what is called the Central Freight Association territory. Very large quantities of yellow-pine lumber are produced in that whole section which find their way into the Central Freight Association territory, and the mills all the way from Georgia to Texas desire to sell in that territory.

Now, there you have market competition, and market competition of the most virulent kind, and that sort of market competition hammered down that rate until it was a low rate without the slightest doubt. That competition has disappeared. Those rates were advanced, first 1 cent, and then another cent, and finally they were advanced 2 cents a hundred pounds, and the testimony on that trial was to the effect that unless every line which led from every part of that territory had first agreed to make that advance it never could have been made. That is the testimony. That is what I mean by the disappearence of market competition. I don't know whether you gentlemen appreciate the extent to which railroad operation has been unified in the United States. I had occasion the other day to tell one of our clerks in our office to make me up a statement which would show certain facts with reference to certain great systems of railroads in the United States. I gave to him six systems, and if I remember right those six systems were the Vanderbilt system, the Pennsylvania system, the Gould system, the Harriman, the Hill system, and the Rock Island system. I said to him, "You take the statistical returns of the railways to the Interstate Commerce Commission and tell me from those statistical returns how many miles of railroad are controlled by those six systems." He did so, and it turned out that of all the railroads of the United States about 55 per cent were embraced in those systems.

But, gentlemen, that did not express it, for the simple reason that the railroads which were embraced within those systems do so much more business and were so much more important than the railroads left out of the systems. For instance, there are 17,000 miles of double track in the United States. Of that 17,000 miles 10,000 miles belong to the Pennsylvania and the New York Central systems alone. Of the railway capitalization of the United States two-thirds is embraced in those systems. Of the railway gross receipts in the United States 62 per cent are embraced in those systems. That does not express it. The men who are potential in these systems are potential in other railroads in the United States. I say that competition between the railroads has ceased, and if it has not ceased entirely it will in the near future. The end of this thing is not yet. You come up into my country, and take the Boston and Maine Railway Company, and there you have a property which operates 2,300 miles of railway. Its capital stock is $27,000,000, so that an investment of $14,000,000 controls every railroad there is in New England north of Boston and Albany and east of the Green Mountains. You can go then into Mr. Hine's territory. I do not remember just how much the Louisville and Nashville operates, but probably 3,500 miles.

The Atlantic Coast Line operates 4,500 miles, and the Atlantic Coast Line owns the Louisville and Nashville. The capital stock of the Atlantic Coast Line, as I remember it, is $38,000,000; so that an investment of $19,000,000 controls those 8,000 miles of railway. Why, gentlemen, there is no limit to it. You can not rely on competition to reduce these rates. That is the point I wish to make. I say that you must rely on something else, because competition has gone. I do not say that it ought not to go. I do not say that anybody is complaining because it has gone, but I say it has gone, as a fact.

Senator DOLLIVER. Those cases you cited where the differentials were changed, were they such cases that you think could not be brought directly into the courts under the Constitution, according to your argument—in the first instance, I mean?

Mr. PROUTY. I do not think the court has any power to determine a rate for the future, and I do not think that the Commission has to-day on its docket a case which can be satisfactorily disposed of without determining the rate for the future.

Senator DOLLIVER. These are the cases you cited.

Mr. PROUTY. Yes.

Senator DOLLIVER. You say the power to fix the rates primarily belongs to the road, but there should be this power invested in some tribunal to correct an abuse. The power of those to fix a rate, according to the testimony given here, would lead to the reduction of, say, 1,000 rates.

Mr. PROUTY. That is often so.

Senator DOLLIVER. Following that up, you would reach nearly all the rates in the country.

Mr. PROUTY. I do not think you would; but I would like to say a word on that, because I have some ideas about that. Suppose that the Esch-Townsend bill became a law. That is a rather violent supposition, but we may suppose it for the sake of argument. We will say that to-morrow morning it becomes a law. Every traffic manager in the United States has exactly the same right to change his rates to-morrow morning that he has now. There is no question about that. If that bill became a law, what would happen? I do not know of any better answer to that question than to inquire what did happen. The Interstate Commerce Commission never possessed the power to make a rate or to fix a differential, but the Interstate Commerce Commission supposed that it had that power. It exercised that power. The people supposed it had that power. The railroads, with some few exceptions, supposed it had that power and conceded it. Now, what did happen when just exactly that thing was done? The act to regulate commerce went into effect in April, 1887. On November 1, 1887, the Commission decided the case of the Board of Farmington, if I get the name right, against the Milwaukee and St. Paul road.

The Milwaukee and St. Paul has two lines between St. Paul and Chicago, one of which is called the "River Line," running through Red Wing, and the other—I forget the name—runs through Farmington and is a longer line. The rate on grain—corn, wheat, and grain products—on the river line was 7½ cents to Chicago, and the rate on the other line from Farmington was 15½ cents to Chicago. Farmington complained that there was an undue discrimination against that town. The Commission heard the case and decided that there was—decided that the rate from Farmington must not exceed the rate from

Red Wing and other points on the river division by more than one-third, and that order was complied with. Immediately afterwards there came this Evans case, of which I have spoken, in which the court reduced the rate on wheat from Walla Walla to Portland from 30 to 23½ cents. Immediately afterwards came the Reynolds Case, in which the Commission determined the classification on lumber should be the same as the classification on ties, and it ordered the railways to make the classificaton on ties the same as the classification on lumber.

The thing I desire to call attention to is the fact that the Interstate Commerce Commission did exercise then exactly the power which it says must be exercised by some commission now, and the important bearing of that is to determine what would be the result to-day. What was the result then? The result then was that a good many complaints of discrimination were filed; that very few complaints for unreasonable rates were filed; but there was no overturning of commercial conditions, there was no attack on railway securities, the streets were not filled with widows and orphans rendered destitute by that legislation. It produced very little effect on the railroad operations of this country. There is no reason to suppose that the effect to-day would be any different. There are more unreasonable rates to-day.

Senator DOLLIVER. That you have reasoned from the fact that after the interstate-commerce law was passed it became evident that the general railway situation was pretty nearly perfect; that there was little or no dissatisfaction in it and few or no complaints made against it. Would that same state of things prevail to-day?

Mr. PROUTY. No; I think there was the greatest dissatisfaction before that act was passed.

Senator DOLLIVER. There was a good deal of talk?

Mr. PROUTY. But the testimony, if you will look into it, showed the rankest condition.

Senator DOLLIVER. How did it happen so few complaints were made?

Mr. PROUTY. A law does two things: It punishes a thing which is wrong—corrects that—and it prevents the perpetration of a thing which is wrong.

Senator DOLLIVER. Did it in this case actually operate to induce the railroads to themselves immediately set about the correction of these evils?

Mr. PROUTY. Certainly; the railroads of this country absolutely revised their tariffs in all official classification territory from the time the long and short haul clause was observed, and all over the country these tariffs were revised to conform with what was understood to be the requirement of the law—certainly. And that, I should expect, would be the effect of the passage of a substantial law now.

The CHAIRMAN. You say that competition is destroyed, or in many instances it is destroyed, and therefore I infer the possibility you stated that the rates can be advanced and have been advanced by reason of this diminution of competition?

Mr. PROUTY. Yes.

The CHAIRMAN. But is it not a fact that it is to the interests of the railroads themselves to help build up and foster the localities on their

lines, and is it probable or possible that they would oppress localities situate on their lines and advance rates to the injury of the communities?

Mr. PROUTY. There is no prospect that an enlightened railroad manager would do anything which would lessen the revenues of his railroad.

The CHAIRMAN. Does not the railroad live and prosper and have success just as the communities it reaches do?

Mr. PROUTY. It certainly does.

The CHAIRMAN. And can a railroad afford, under those conditions, to unreasonably advance the tariff rates?

Mr. PROUTY. A railroad can not afford to advance the tariff rates to such an extent as will deplete its revenues.

The CHAIRMAN. Or reduce business.

Mr. PROUTY. It may reduce its business and not deplete its revenues. Take an illustration. I put it to Mr. Baer when he was talking about coal. There are 4,000,000 tons of anthracite coal used in the city of New York. If the price of that coal is advanced a dollar a ton, it will perhaps decrease its use by a half million tons, so that you will sell three million and a half tons there. If you increase that price a dollar, you gain three million and a half dollars, and you lose the sale of half a million tons.

Senator DOLLIVER. That is where the road owns the product?

Mr. PROUTY. Yes.

Senator DOLLIVER. There is no competition; and there is another thing that the road was doing—a vicious thing.

Mr. PROUTY. I do not say that it is a vicious thing or an improper thing at all. I do not intimate that. I do not say that the rate is too high.

Senator DOLLIVER. It is an abuse.

Mr. PROUTY. I do not claim it is an abuse. I am not intending to make any insinuation that the rate is too high.

Senator DOLLIVER. But do you think it is proper for railroads to be interested in manufacturing or mining as against their competitors on their lines?

Mr. PROUTY. That is an economic proposition. No; I do not much think that it is; but they are in a great many cases, not only in the case of the anthracite-coal roads in Pennsylvania, but it is the case with the bituminous roads out West and in a great many places. Now, what I wanted to say was this: Take the cattle rate from Texas. That cattle rate has been advanced three times within the last six years. I do not suppose that the advance in that cattle rate has affected the movement of cattle. I expect there are probably as many cattle raised in Texas to-day as would be raised in Texas if the rate was exactly the same as it was six years ago. Nevertheless, the revenues of the companies have been very materially increased, so that when you can increase the rate without diminishing the movement it is for the interest of the railway to increase the rate; and it may often happen that a railroad can increase the rate without diminishing the movement to a point which would be utterly unreasonable and unjust.

I would like to say one thing more. I said competition had pretty well gone out in this country. We heard some testimony the other

morning which rather illustrates that. It was the testimony in the case of the Pittsburg Plate Glass Company, which complained that the import rates from Antwerp to certain points in this country were lower than the domestic rates in this country. It appeared that the rate from Antwerp to Chicago through Boston was 40 cents, and from Boston to Chicago the rate was 53 cents, as I remember it. It appeared that the rate which Mr. Fish charges from New Orleans to Chicago was 75 cents, but that the through rate from Antwerp through New Orleans via the Illinois Central was 32 cents. Now, when we came to inquire into it, this turned out to be the fact. There was no competition between New York and Chicago; they had got that out of the way. There was no competition between Boston and Chicago; they had got that out of the way. There was no competition between New Orleans and Chicago because that was out of the way; but when you started on the other side in Antwerp, where you could come in through the Gulf of St. Lawrence or through Boston or New York or New Orleans or Galveston, there was the most active competition, and that competition produced a rate of 38 cents from Antwerp to Minneapolis as against the rate of 40 cents from Chicago to Minneapolis.

That illustrates the effect of competition. They have expressed the thought that they were confident they would be able to get rid of that competition. They had not been able to devise a means yet, but they thought that within a short time they would be able to persuade the Gulf lines that they ought to get together and fix the rate up and then they would be able to charge the foreigner just as much as the American.

Senator DOLLIVER. What localities were injured? What localities complained and will complain to you?

Mr. PROUTY. The people who complained were the Pittsburg Glass Company. They said: "Great heavens, we manufacture glass down here in Pittsburg, and it costs us more to get our product up to Minneapolis than it costs the Belgian manufacturer to get his product all the way from Antwerp."

Senator DOLLIVER. Was the complaint made to the Commission?

Mr. PROUTY. Yes.

Senator DOLLIVER. What is the disposition of that?

Mr. PROUTY. We have not decided that case yet.

Senator DOLLIVER. Now, in beginning an inquiry, how would you constitute the Commission? Would you have their term of service for a long time—longer than now?

Mr. PROUTY. If you ask me what I think about it as an individual, I would say "no." If you ask me what my opinion about it is if I were to be appointed an interstate commerce commissioner, I would say "yes."

Senator DOLLIVER. Do you think a body subject to political influences, such as is the case of the Commission at present, removal at the pleasure of the President——

Mr. PROUTY. I do not understand that the commissioners can be removed at the pleasure of the President. He takes that view of it, but I do not.

Senator DOLLIVER. At the end of a given time or at pleasure would you be as untrammeled and free to act as a court which was appointed for life?

Mr. PROUTY. No; I think you obtain a somewhat more independent action in case of a court than you do in case of a commission, but, after all, I think it is a pretty good plan to have an administrator coming back to the source of power about once in six or seven years. I do not find any fault with that.

Senator DOLLIVER. If the power is given the Commission to substitute a rate for one challenged, will not that confer upon it the power to advance and lower rates?

Mr. PROUTY. I do not think the Commission would exercise the power to advance a rate. It would confer that power and it must of necessity confer that power if the Commission is to fix a differential, because there are certain cases where a differential can not be fixed unless you have a right to fix both the maximum and the minimum rates.

Senator DOLLIVER. Where discriminations between the communities are alleged, if the power is given to the Commission to fix the rate, could it not lower the rate or raise the rate to avoid the discrimination?

Mr. PROUTY. I think the Commission in that case should be allowed to determine the differential without saying whether the rate should be lower or higher. The railroads should be allowed to observe it. If they decline to observe it, then the Commission should be allowed to do it.

Senator DOLLIVER. Could you control the question of discrimination between communities except on the power to fix both the maximum and the minimum?

Mr. PROUTY. I have answered that question.

Senator DOLLIVER. That is all the questions I desire to ask.

Mr. PROUTY. I want to add one thing. I have said that the power to correct a rate was not in any way analogous to the power to fix the interstate rates of this country, and it is not; but there is a certain basis of fact to the claim of the railroads in that respect. If you fix one rate to-day and another rate to-morrow, you presently have fixed a great many rates, and if those rates can not be departed from without the consent of the Commisison or a court that fixes the rates, you have got in fact a more or less rigid system of rates. I have always insisted in order to obviate that difficulty—I do not think there is any real difficulty, but in order to obviate it, if there be one—that the rate fixed by the Commission should be observed for a certain length of time, and should then cease to be obligatory on the carrier. I have said if the railroads observe it for a year or two years that the carrier should have the same right to change that rate as any other to begin anew.

Senator CULLOM. Mr. Prouty, I do not think I want to ask you very many questions, but as I understand you, the chief thing that you think ought to be done by this Congress if they do anything, is to not only allow you to determine a reasonable rate on complaint, but if you find that it is not reasonable, to allow you to make another.

Mr. PROUTY. I do not say that any power should be conferred on me or that it shall be conferred upon the present Commission, or anything of the sort, but I say in order to regulate the railroad rates of this country you have got to do it by a commission, and that commission must do what you have said. It must have the right to fix the rate.

Senator CULLOM. I do not mean you personally or this particular Commission, but any commission that may be appointed.

Mr. PROUTY. Some commission.

Senator CULLOM. You think it ought to be a commission to fix a rate for the future.

Mr. PROUTY. It can not be anything else. I do not know whether it has been spoken of here or not, but the experience of the English people on that point is instructive. They have a law like ours, except that Parliament fixes the maximum rate.

Senator CULLOM. You do not believe a maximum rate in this country would amount to anything?

Mr. PROUTY. It depends on who fixes it. If the legislature of Nebraska fixes it, it amounts to a good deal; if somebody else, it may not.

Senator CULLOM. Can a commission or anybody else make a rate for the whole country and put it in force and say no railroad, no interstate commerce carrier, should go above it?

Mr. PROUTY. Congress could.

Senator CULLOM. We could make it, but could it be operated successfully in the interests of the public as well as of the railroads?

Mr. PROUTY. It would depend on the schedule. If the schedule was all right, the railroads might fall below that if they wanted to. That is what a railroad does when it develops an industry on its lines; it makes a lower rate and not a higher one.

Senator CULLOM. If the maximum rate were to be made for the whole country, it would have to be made so high that the railroads would not observe it or else the people would be charged more in many cases than they ought to be.

Mr. PROUTY. I would not favor the attempt to make a maximum rate. I have said that.

Senator CULLOM. Some of these States make maximum rates.

Mr. PROUTY. Yes; and some make absolute rates.

Senator CULLOM. And it is possible that in a State a maximum rate might be lifted up and not be injurious, but when you come to a whole country with all sorts of conditions existing it would seem to me at least that the maximum rate would be of no particular account; and, as I understand, you would not approve the making of such a rate?

Mr. PROUTY. No; I have never believed in that.

Senator CULLOM. But you do believe—I want to get that understood thoroughly whether you do or not—that a commission, to have its full force and value to the country, ought to have the power not only to determine what a reasonable rate is or what an unreasonable rate is, but when they determine that a rate is unreasonable, to undertake or to declare what a reasonable rate should be.

Mr. PROUTY. Certainly.

Senator CULLOM. And you are willing to let that rate be subject to a court of review, to be investigated afterwards?

Mr. PROUTY. I think it ought to be, in just so far as a court can review it.

Senator CULLOM. You think it ought to be?

Mr. PROUTY. Yes, sir.

Senator CULLOM. What would you do in the meantime? Would you have the rate take effect immediately upon your making it?

Mr. PROUTY. I do not think that you can say anything about that. I think the court has an absolute right to decide and suspend any rate which any commission may make and that you can not help it.

Senator CULLOM. That is probably so, but the court would have to have some little time to do that in, and what would you do with the rate in the meantime?

Mr. PROUTY. It seems to me that a rate ought to stand in abeyance long enough to permit a railroad company to take any steps it wanted to take. It must publish its schedules if it wants to put a rate in effect, and it must file a petition if it wants to test a rate.

Senator CULLOM. You were going to leave it to the courts to determine that question.

Mr. PROUTY. I think when the question gets to the courts the court will take its own time.

Senator CULLOM. I am talking now about what you would do with the rate before the court gets hold of it.

Mr. PROUTY. It seems to me the rate ought to go into effect after so many days. That is the ordinary rule.

Senator CULLOM. You have talked a good deal about these cases that you have had under consideration. It has been stated here, I believe, that some thirty-odd cases have been tried by you which have been taken to the courts, and all but two of them, perhaps, have been overruled. Is that true?

Mr. PROUTY. I can not give you the exact figures, and I think you had better ask somebody else on the Commission about that. I simply say this, that I do not think the Commission has ever been overruled by the Supreme Court of the United States on a question of fact. We have attempted to make something out of this law.

Senator CULLOM. I wish you would explain a little about these cases that have been taken to the courts and overruled.

Mr. PROUTY. You have a good illustration of that in the case referred to, this Missouri Pacific Case, in which the court held that the circuit court might take jurisdiction and grant an injunction. This Commission, a good many years ago, in looking around for some way in which this law could be enforced, instituted that suit. I call attention to the fact that this suit was begun by the Commission and not by the recommendation of Congress or the advice of anybody else; the Commission did that because it was trying to find a way in which to enforce the law. We brought a suit in the name of the United States to enforce the act to regulate commerce. Before that was decided the Elkins bill had become a law; but if the Elkins bill had not been passed, the judgment of the court would have been against the contention of the Commission in that case, and that would have added one more to the cases in which the Commission was overruled. Now, what the Commission was trying to do was to find some foothold, some place where it could stand to enforce the provisions of this law.

Senator NEWLANDS. Was that a suit to enjoin rates?

Mr. PROUTY. No; to prevent the charge of higher rates to Wichita than to Omaha.

Senator NEWLANDS. You say the court would have held that the court had no jurisdiction in that case if it had not been for the Elkins bill?

Mr. PROUTY. The court says that.

Senator CULLOM. Are you certain about that?

Mr. PROUTY. I think so.

Senator CULLOM. It is true they did hold that if the Elkins bill had not passed it would take jurisdiction——

Mr. PROUTY. When you get seven members of the Supreme Court you get a good many. It is generally about four to five.

Mr. Commissioner FIFER. I think the majority opinion was against the injunction, that the injunction would not lie under the old law; but the Elkins bill in the meantime had become a law and the court said it could not try the case under the Elkins law.

Mr. PROUTY. That may be; that is what I understood.

Senator DOLLIVER. What has become of that case?

Mr. PROUTY. Nothing has been done with that case for this reason. The Commission has held in several instances that competitive conditions on the Missouri River justify a lower rate than to Wichita, and we do not think we could say that the rate to Wichita ought to be as low as the rate to Omaha.

Senator DOLLIVER. You got the case now on the calendar of the circuit court?

Mr. PROUTY. Yes.

Senator DOLLIVER. Do you mean to say the Commission refuses to prosecute further?

Mr. PROUTY. I do not know that the Commission refuses to prosecute the case further. In view of what has been said I think we ought to go on further, and see what the court can do, but my understanding of that case has been this, that if it was found as a fact that the rate to Wichita ought not to be any higher than the rate to Omaha the court may possibly enjoin the higher rate to Wichita; but if the court was of opinion that the rate might be higher to Wichita but not as much higher as now, it would have no power to act in the premises. The opinion of the Commission has been that the rate to Wichita must be higher than to Omaha, but not perhaps as high as the present differential.

Senator DOLLIVER. Where do you get the idea that the court would not entertain the question of what the differential might be in such a case?

Mr. PROUTY. Because the Supreme Court of the United States has said it can not.

Senator DOLLIVER. Have you got the form of the complaint, the prayer for relief in that case, Senator Clapp?

Senator CLAPP. The ultimate prayer of relief is set out. The whole bill, I think, is not set out.

Mr. Commissioner FIFER. The Commission could do nothing further. The majority opinion said they had no authority whatever to file the bill, and it could not be sustained under the old law. The Elkins bill, however, had been enacted, but the court said it did not apply to that case, and what further could we do?

Senator DOLLIVER. You could appeal it to the Supreme Court of the United States. They sent it back under the general opinion, as I recollect, that it was a question of equity fully within the jurisdiction of the court under the Elkins law and could be proceeded with in the circuit court. I may be wrong about that, but that is my recollection of the situation of the case. Now, then, if the Commission would

go ahead, possibly amending the complaint so as to make this case that any discrimination except one they might suggest is unjust and illegal, I do not see why the court would not be thoroughly within its jurisdiction to enter a decree that such a discrimination should cease.

Mr. Commissioner FIFER. And proceed under the Elkins Act?

Senator DOLLIVER. Yes.

Mr. Commissioner FIFER. That would be beginning a new suit.

Senator DOLLIVER. No; the suit is back there on the calendar under directions from the Supreme Court.

Mr. PROUTY. I have not understood, and I do not think the Commission has understood, that the Elkins bill added anything practically to our power to correct a discrimination in the published tariff; perhaps it does. The view of it you suggest had never quite occurred to me. I do not see how you could gain anything under the Elkins bill. I do not believe you would gain anything by going directly into the court. I do not believe the remedy which the court can apply is any broader now than before the Elkins bill was passed.

Senator CLAPP. According to your own statement this suit to restrain discrimination could not have been entertained at all before the Elkins bill was passed.

Mr. PROUTY. No.

Senator CLAPP. Now they do entertain it?

Mr. PROUTY. They have jurisdiction now, but that does not increase the remedy.

Senator CLAPP. You had not any remedy at all before this was passed?

Mr. PROUTY. It does not increase the remedy which the court could apply.

Senator CLAPP. No; of course not.

Mr. PROUTY. And under the Constitution of the United States the courts can not be given power to apply that remedy.

Senator CULLOM. One witness says here that he wants a commission because that is a clear way of correcting the wrong; another witness says that the Commission dawdles along with these cases and never gets to a decision or to a conclusion of them, and that a direct application to the court would result in a more speedy remedy. What I want to get at is an explanation from you as one of the Commissioners as to what has been the cause of these long delays upon the part of the Commission in disposing of cases coming before it.

Mr. PROUTY. Those delays are partly due to general causes; they are partly due to specific causes in particular instances. The varied duties of the Commission render it impossible to proceed with great expedition in many cases. As I have already said to you, we have certain executive duties. We also have to deal with these informal complaints. I recently went to Chicago and was gone ten days hearing cases out there. When I came back I found on my table correspondence with reference to informal complaints that took me three days to answer and dispose of. We have conferences about various things. People come to talk to us. We listened all day yesterday to a man from California who was setting out the conditions of the fruit industry. We are subject to the requirements of the public in that respect. We can not proceed with the same expedi-

tion that a court does which simply has a docket to hear and nothing to do but to hear that docket. Now, there is another reason. You gentlemen do not understand the extent of these cases. We are sending out to-day what is called the differential case between the ports of Boston, Philadelphia, New York, and Baltimore. That case was begun a year ago, a year and a half ago perhaps.

Now, we have taken the testimony in that case in all I expect a month. We have taken three or four thousand pages of typewritten testimony. That takes time. We had the greatest difficulty in getting the parties together to agree on a time when we could hear the case and take the testimony. That was a case where everybody was especially anxious to expedite it and where the Commission has never declined to assign the case when the parties were ready to hear it, and still that case was not submitted for decision until about a month ago. Now, when you sit down to decide that case you have 3,000 pages of testimony and you have a mass of exhibits which you could not read through in a month. The case was argued for several days and a thousand pages of briefs were filed. It takes time to examine and work out that kind of a case. In that case also I prepared the opinion myself, sat up nights and worked Sundays in order to get it out. I got it done so that I was ready to hand it to the printer. It had taken me, I believe, ten days to do that work, including nights and Sunday, and it has taken eighteen days to print it, so that the delay is not altogether on the part of the Commission.

Now, there are some other cases which stand like this: Judge Veazie, as you know, was my predecessor on the Commission. For the last year he was unable to do any work at all, and for a year before that he did very little work. These cases that were assigned to him in their regular order, as a result came to me, and when I came on the Commission I found a lot of old cases in which I prepared the opinions. There were some cases in which I prepared an opinion which appeared to be two years old before the opinion was promulgated. I prepared another opinion in the Bourbon Stock Yards Case, from Louisville, and after the opinion was prepared in that case and before it was promulgated, we were asked to retain the case until a case involving the same principle was decided by the Supreme Court of the United States.

Mr. Commissioner FIFER. That is better than the courts, because they held the Wichita case for five years.

Mr. PROUTY. I think the cases ought to be heard more promptly by a commission. They can be heard more promptly by a commission than by a court.

Senator NEWLANDS. In that connection, it is claimed by the representatives of the railroads that this delay is simply an inherent part of the system, and their contention is that it is utterly impossible for a commission to revise the action of hundreds of traffic managers in this country and accomplish the work.

Mr. PROUTY. If they can accomplish the work at all, they can do it promptly. If they can not do it promptly, they can not accomplish it at all.

Senator NEWLANDS. Could you suggest any method by which it could be expedited?

Mr. PROUTY. If you will take away from the Commission its other duties and leave to it simply its administrative duties as a Commission you will have added very much to its capacity for work. I think, too, if the Commission were to proceed as a commission proper, and not as a court—it has proceeded too much as a court—it would make much greater expedition. Take the testimony in this live-stock case. I took it, and I sat there, and Judge Baxter, who was for the railways, sat there day after day. It kept us a month in taking that testimony. I said to Judge Baxter, "You know all about it, and I know all about that, and the Commission knows all about it. Now, what is the use of our staying here to take this testimony?" The judge replied, "Of course you and I know all about it, and your associates do, and there is no dispute about the fact anyway, but I have to make the record for the court." That has been one trouble—that we have been making a record for the court.

The CHAIRMAN. Would you do away with that?

Mr. PROUTY. Certainly I would. I think the Commissioners should sit down, and should simply get at the facts in a case.

The CHAIRMAN. And not bother himself about making a record or about hearing long arguments?

Mr. PROUTY. No; he should get at every fact in the case; he should hear all there is to be said about the case. But he is not the court, and he ought not to make a record for any court, in my judgment. You take that Wichita case which I referred to—the case of sugar differentials. There was a case that we decided in a month. It was a complex case, and yet I undertake to say that we never decided a case where the record was any more complete than that record was. I required them to file their briefs within ten days. They all said that they could not do it, but we never had better briefs than were filed in that case. You can get along if you say you must get along, and a commission can move faster than a court.

The CHAIRMAN. You suggest by your testimony the theory that a commission could take care of the interests of the public more expeditiously than a court would do it, and hence I have been a little anxious to know what the reason has been for what appeared to be the very slow progress on the part of the Commission in deciding cases. I am glad to have you explain that situation to some extent. I think that is all.

Senator KEAN. You stated that you had made up a table of the railroads owned by different individual systems controlling about 55 per cent of the mileage of the country.

Mr. PROUTY. I haven't it here; I have it at the office, and I would be very glad to file it as a part of my testimony.

Senator KEAN. I wish you would. Then, there is one other question I have. You stated that all of the opinions of the Supreme Court of the United States had dealt with questions of law and not with questions of fact.

Mr. PROUTY. No; I don't think I said just that.

Senator KEAN. The decisions were founded on questions of law.

Mr. PROUTY. In reviewing our cases I think that is so.

Senator KEAN. I call your attention to the cattle case.

Mr. PROUTY. Yes; I have in mind that case.

Senator KEAN. That was decided on a question of fact?

Mr. PROUTY. Not against the Commission. The decision of the Commission on the question of fact was sustained. The court held that certain other facts appeared in the case which rendered it impossible to execute the order of the Commission, and sent the case back for further proceedings. The Commission had held in that case that of the added $2 terminal charge, $1 was improperly imposed. The court held with the Commission on that proposition, but it appeared that from certain territory the rate had been reduced after the imposition of the charge, and the court held that inasmuch as that territory could not be distinguished from the other territory the order of the Commission could not be enforced, and the case was sent back, as I say, for further proceedings, and further proceedings are being had in the case now.

Mr. Commissioner FIFER. That the through rate over certain territory was an offset to the permanent charges.

Senator KEAN. So it is stated here. It was decided on a question of fact, however, and not upon a question of law.

Mr. PROUTY. It has been stated here that discriminations are the serious thing. I am told that there are no advances in rates which are complained of. I want to deny that most emphatically. I think the serious questions which confront the Commission, and which have confronted the Commission in the last three or four years, are questions of advances of rates—questions where the only thing complained of was the advance in rates.

Senator KEAN. Wouldn't you claim that the Commission, if it had the power to revise rates, would also have the power to raise them?

Mr. PROUTY. I do not think they would. They might in some cases. The railroad would have the power to raise the rates.

Senator KEAN. The Commission, if it had the power to fix the rates, would it not have the power to say that the rate was too low and to lower it?

Mr. PROUTY. But the Pennsylvania Railroad would not have to go to the Commission and ask leave to raise the rate. It would raise the rate to start with.

Senator KEAN. Do you think that the people of the country would want you to declare that the rate was too low?

Mr. PROUTY. No, sir.

Senator KEAN. You think they are on a declining scale, and not on a rising one?

Mr. PROUTY. I think the rates to-day are on a rising scale.

Senator KEAN. I mean the Commission, and not the rates.

Mr. PROUTY. Well, the Commission ought to be in favor of a just scale, whatever that is. The peach growers of Georgia complained to us that the rates were too high. I heard a gentleman here this morning say that there never had been any complaint of high rates with the peach growers of Georgia.

Senator KEAN. He said he thinks the freight rate is absolutely right, but he thought the icing charges might be too high.

Mr. PROUTY. I understood him to say that there never had been any complaint of the freight rates. In point of fact, the peach growers of Georgia complained to the Commission that the rate was too high.

Senator KEAN. Was it the the peach growers of Georgia?

Mr. PROUTY. The peach growers.

Senator KEAN. Was it not the commission merchants?

Mr. PROUTY. Oh, no; the commission merchants did not do it at all. The growers themselves came in before the Commission, and we tried that case and heard it and decided that the rate was low enough and it ought not to be any lower.

Mr. Commissioner FIFER. That is, a part of it.

Mr. PROUTY. We decided that the rate from New York to Boston was too high.

Senator DOLLIVER. Mr. Prouty, I have been interested in your statements that the Commission at present exercises certain contradictory functions, and you have suggested the transfer of certain of the present duties of the Commission to somebody else. You have certain duties in relation to the prevention of offenses against the interstate-commerce law, have you not?

Mr. PROUTY. I think so.

Senator DOLLIVER. Now, to what Department of the Government would you suggest the transfer of those duties?

Mr. PROUTY. If those duties alone were to be transferred it seems to me they should go to the Attorney-General, to the Department of Justice.

Senator DOLLIVER. You have certain duties, of inquiry and investigation, and to what Department of the Government would you transfer those?

Mr. PROUTY. I think that the duty of conducting the inquiry or rather I should think that the duty of holding an inquiry should be left with the Commission. The duty of asking for the inquiry or determining whether the inquiry shall or shall not be conducted should, it seems to me, go to the same Department as the executive functions, but I think the Commission should still have power to compel the attendance of witnesses and take testimony; but it should be done at the request of some other department, not on the initiative of the Commission.

Senator DOLLIVER. You have exercised, and I think with very great value to the public, a certain power of arbitration, of conciliation between the public and the carriers. Would you desire to have those powers retained in the Commission?

Mr. PROUTY. I would not desire to make any recommendation that they be taken from the Commission, but I suggest to you it might be better if those powers were taken away and placed with some other department.

Senator DOLLIVER. And after you have all these powers transferred to somebody else the function of the Commission would be to settle questions of rates and discriminations when they were presented to you?

Mr. PROUTY. Yes.

Senator DOLLIVER. Now, I have taken the opportunity during the winter of reading through the Interstate Commerce Commission reports, and I have been impressed by the fact that notwithstanding they lack the power to fix rates, which are complained of, nevertheless your Commission has exercised a very useful function in the Government, and I have been wondering whether it would not be

policy to continue the Commission with substantially the same powers and duties which it now exercises and to create in addition to the Interstate Commerce Commission a tribunal to sit in judgment upon these questions of rates for the future and discriminations, leaving this higher commission a commission which might be called a "commission of interstate commerce appeals," in a quiet atmosphere undisturbed by the business of the detective, the prosecutor, or the inquisitor of any sort—just to pass judgment on this rate question. What would you say to that idea?

Mr. PROUTY. That meets my suggestion exactly, only it must be a commission. It can not be a court.

Senator DOLLIVER. I think it would greatly weaken this situation to have these powers of inquiry in the Department of Justice or in the Department of Commerce and Labor removed from the atmosphere that surrounds the present Interstate Commerce Commission. You would think there is some sense in the opinion, then, of just continuing the present Commission in the exercise of its present powers, possibly increasing them somewhat, at least defining them somewhat, and creating a commission administrative in character, purely, above the present Interstate Commerce Commission to pass judgment upon questions of rates and discriminations?

Mr. PROUTY. I see no objection at all to that suggestion.

Senator CULLOM. Would not that be running at cross purposes?

Mr. PROUTY. No; that commission would have no power to pass on any questions unless complaint was brought by the Interstate Commerce Commission or somebody else. You might make it simply an appellate commission.

Senator CULLOM. Yes.

Mr. PROUTY. The objection to that is that it takes up so much time.

Senator CULLOM. So far as the Commission is concerned I would have it of original jurisdiction, and let the question be raised by the other commission.

Mr. PROUTY. All I contend for is some tribunal that can pass on these questions and give effective relief. I think that you ought to make that tribunal just as fair as you can make it.

Senator CULLOM. How many people ought to sit on that higher tribunal?

Mr. PROUTY. I have always thought three was enough.

Senator CULLOM. Would that adequately represent the whole country?

Mr. PROUTY. I do not know what you mean by that.

Senator CULLOM. Are not these questions likely to become territorial in character?

Mr. PROUTY. Then you ought not to represent the whole country, because it would be very unfortunate if a commissioner was to have a particular opinion because he came from a particular territory.

Senator CULLOM. I know, but you take the Maximum Rate Case, and it was essentially a fight between the Mississippi Valley, or at lease the western country, and the Atlantic seaboard cities. Might it not be a good idea to have these commissioners so distributed as to get the point of view of the various sections of the country?

Mr. PROUTY. I think the members of our Commission, if we are the initiating body, probably ought to be distributed. I do not think

the members of the appellate commission ought to be distributed. I think they ought to be entirely removed from every consideration of that sort.

Senator CULLOM. Would you suggest a larger salary for such an appellate commission?

Mr. PROUTY. I speak now as an individual and not as an Interstate Commerce Commissioner. I think all Government officials are underpaid. I think you are underpaid and I think the judges are underpaid and I think the Interstate Commerce Commission is underpaid, but I do not see any propriety in paying an Interstate Commerce Commissioner any more than you pay a Federal judge.

Senator CULLOM. But ought not those people to be people of large affairs, great business men with personal knowledge of the practical details of American businesss, and would it be possible to induce men of such business qualifications to give their attention to public affairs without a salary somewhat corresponding to the salaries paid in the business world?

Mr. PROUTY. There has been a proposition, I believe, made to pay the members of the Interstate Commerce Commission $10,000. I do not think that $10,000 would secure a better Interstate Commerce Commissioner than would $7,500. If a man is big enough to be an Interstate Commerce Commissioner and wants to be one it would hardly make any difference to him whether he got $7,500 or $10,000. He ought to have enough so that he can live.

Senator CULLOM. If he was getting ten or fifteen thousand dollars in private business, he would not have any motive to go into the Interstate Commerce Commission.

Mr. PROUTY. You might say the same thing about the Federal judges.

Senator NEWLANDS. Does not this require an experience in rate making, and would it not be advisable to have traffic managers of great experience on this commission? Now, such men get very high salaries.

Mr. PROUTY. In my judgment a traffic manager would not make a good Interstate Commerce Commissioner. I am talking now about the appellate commission, so called. I think if you will take any railroad president who has a competent knowledge of the management of his road, he will tell you that he would not want a traffic man on that board unless he was his traffic man, and if he was his traffic man he would like to have him. I believe that the best board would be a board consisting either of lawyers or of business men who had had some intellectual training. A man must have a certain amount of intellectual training to fit him for that place. He must also have a certain amount of expert knowledge. The expert knowledge he will get by working there for three or four years. The intellectual training does not come to him unless it comes to him as a result of his previous life. I express the opinion with great hesitation, but I do not think that a board of traffic men would make a good appellate commission. I do think if you had seven Interstate Commerce Commissioners as the initiating board it would be well to have one traffic man on it and one financial man, I take it, perhaps, but so far as that is concerned the traffic men in this country who know about traffic are not all paid $50,000 a year, you know.

Senator CULLOM. You do not take to this extremely high salary business, do you, either?

Mr. PROUTY. I do not, unless I am getting the salary.

Senator CLAPP. In regard to the provisions of the law which you would suggest, I think you suggest that you, of course, would make provisions for a few of the orders fixing the substituted rate. Now, ought there not to be the same provisions for reviewing the action of the Commission in the condemnation of the existing rate?

Mr. PROUTY. Why, it seems to me that the condemnation of the existing rate and the fixing of the new rate are essentially the same thing.

Senator CLAPP. Yes; subject to the same principle. Do you think that the rate when it is fixed should be by law for a certain definite length of time?

Mr. PROUTY. No; I do not think it should be fixed for a certain length of time, but I do think there is no objection to saying that when the carrier has observed that rate for a certain length of time it has the same right to change it as it has to change every other rate, subject, of course, to the same right of review.

Senator CLAPP. Would you fix that time by law, or leave it to the carrier?

Mr. PROUTY. Well, it sounds like a nonsensical proposition, but I have always said that if the carrier were obliged to accept the judgment of that tribunal and put in that rate it would answer the same purpose as though it were obliged to observe it for a certain length of time.

Senator CLAPP. First have the carrier accept that rate and put it into effect and let it become the condition as to that road?

Mr. PROUTY. Yes.

Senator CLAPP. And then if the carrier thought that conditions had changed so as to require another rate, let the carrier initiate that other rate, subject to the same authority of the Commission to challenge and reduce or fix as they did before?

Mr. PROUTY. Yes; it has always been my opinion that that would work out all right. The principal thing is to substitute the judgment of somebody else for the judgment of the carrier.

Senator CLAPP. And that being once done and effectively done, it would still preserve the elasticity in adjusting rates to varying conditions, to allow the carrier to change that by initiating a new rate at his own peril.

Mr. PROUTY. As I have said, it sounds like a ridiculous proposition to say that after the Commission has been to the trouble of determining the rate that the carrier may change it the next day, having put it in for one day, but you must assume that people are going to act in good faith in this world, and it seems to me that you would have accomplished all you desired to accomplish by a provision of that sort.

Senator CLAPP. The plan of Senator Dolliver of an appellate commission, except as to the distribution of the first functions, is practically your theory?

Mr. PROUTY. Practically what I have always contended for.

Senator NEWLANDS. Your plan does not involve an appellate commission, but a division of the Commission into two bodies—one a prosecuting body and the other a quasi judicial body

Mr. PROUTY. What I think you must accomplish is to create in some other way a body which shall be absolutely free from all partisan interest.

Senator NEWLANDS. It would make little difference whether that was a new body or whether certain functions were taken from this Commission leaving this Commission clothed with that function.

Mr. PROUTY. I want to say this: I have only one hope in this matter and that is that you will define the powers of the Interstate Commerce Commission. We have been trying to find out for eight years what power we have and we do not know yet. I hope you will tell me what I have got to do, and if you tell me what I have got to do, if I stay on the Commission, I will try to do it and to be satisfied with it.

Senator NEWLANDS. Judge Prouty, regarding the organization of this Commission, your idea is that three members will be sufficient for a commission whose duties are to be limited as you suggest?

Mr. PROUTY. I have always thought so.

Senator NEWLANDS. Now, the contention of the carriers is that a very large number of men are employed in rate making; that these men run all the way from the local freight agent up to the traffic managers, and they come in intimate contact with the communities which they serve, and know their wants and conditions, feel the commercial pulse of the country, and communicate with each other, and in that way get a vast amount of information and experience that fits them for this duty; and they insist upon it that a board of this kind, of only a few members, would be overloaded, and so forth. Now, did you ever think of enlarging the Interstate Commerce Commission in such a way as to provide for branches—two or three in each one of the rate-making centers of the country? As I understand it, there are five or six rate-making centers in the country, such as San Francisco, Chicago, St. Louis, Boston, New York, etc. Did you ever think of the suggestion that these Commissioners would be as close to the commercial conditions of the country, or approximately as close, as the traffic managers, so as to act expeditiously?

Mr. PROUTY. We have often discussed in the Commission the advisability of establishing a branch in Chicago, and perhaps in San Francisco. I do not think that would be necessary in San Francisco, because San Francisco is not an interstate rate-making center. At the present time it is doubtful if the Commission would be justified under the law in doing it.

Senator NEWLANDS. I am asking now if it could be done?

Mr. PROUTY. I speak only for myself, but I think it would be of great value if the Commission had a permanent abiding place in Chicago, in Kansas City, and perhaps in New York City.

Senator NEWLANDS. In addition to the one here?

Mr. PROUTY. Certainly. A place into which the shipper could come, and where he could sit down with a representative of the Commission. The Commission would come into closer touch with the railway operations and the commercial operations of the country, and a great many shippers would present complaints in that case who never do so now.

Senator NEWLANDS. Now, in that case, if you had Commissioners who were located in such rate-making centers, they would belong to

the quasi-judicial board which directs them, or belong to the executive and prosecuting board?

Mr. PROUTY. I should certainly think they belong to the executive and prosecuting board.

Senator NEWLANDS. Now, as to the constitution of the Commission from that point of view, do you not think that we could provide for the selection of men who had been trained at rate making in the country to act in that capacity in these rate-making centers, and would it not be an advantage over the system of appointing for such executive and prosecuting duties men simply trained in the law?

Mr. PROUTY. Yes. If the Interstate Commerce Commission were to have a single representative in Chicago, to come into touch with the shippers and the railways there, he ought to be some man with a knowledge of traffic conditions. He must either have it originally or he must obtain it.

Senator NEWLANDS. It does not necessarily follow that because a man has been trained in the service of one or more railways when he is transferred to the service of the United States he would continue to serve the interests that had heretofore employed him? You would not regard that as a disqualification?

Mr. PROUTY. Not at all; but a traffic man gets into the habit of looking at these questions from a certain standpoint. Now, an Interstate Commerce Commissioner should not look at the question from his standpoint. The traffic man looks at the question from the standpoint of the railroad mind. The Interstate Commerce Commissioner should consider it from the standpoint of the railroad mind and the whole public.

Senator NEWLANDS. But, if such a traffic man, with intimate knowledge of rates, were transferred to the service of the Government and public, would he not be likely to look out for the interests of the governing public, even though he had that training?

Mr. PROUTY. He ought to do so. I do not see why he should not.

Senator NEWLANDS. Now, as to the powers of the Interstate Commerce Commission, you say you have been engaged in constant effort to ascertain what your powers were?

Mr. PROUTY. Yes, sir.

Senator NEWLANDS. Then I think your criticism is entirely just as applied to the original act of 1887, that it would seem to limit your powers merely to providing for the forms of schedules and arranging for the filing of schedules, and publicity, and so forth, and also for the institution of damage suits at the instance of persons claiming damage; but the statute of 1891 seems to enlarge those powers and give you this power:

> And the Commission is hereby authorized and required to execute and enforce provisions of this act; and upon the request of the Commission it shall be the duty of any district attorney of the United States to whom the Commission may apply, to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act.

Now, will you kindly state what the Commission does regarding those proceedings in court after a complaint has been filed by the Commission?

Mr. PROUTY. Now, the powers of the Commission relate to two distinct subjects-matter. One thing is the compelling of an observance

by the carriers of published tariffs; another thing is the correction of discrimination in the tariff. Now, do you want to know what the Commission has done to prevent the payment of rebates, or do you want to know what the Commission does with the complaints that are made before it as to discriminations in the tariff rate?

Senator NEWLANDS. I would like to know what you do as to both, simply the form of procedure as in the courts.

Mr. PROUTY. In respect to the compelling an observance of the published schedules, and a prevention of rebates, there are just two things we can do. We can, of course, go out and ferret out testimony. We can not do that personally, but we can employ agents to do it. We can hold investigations. We can put these traffic men on the stand; we can ask them to produce their books and their papers, and we can turn the evidence which we obtain in to the Attorney-General. Now, while the act says that the district attorney shall prosecute under our direction, if you read it carefully it comes to this: That all we can do is to pass over to the Department of Justice the evidence which we obtain.

When I first came onto the Interstate Commerce Commission, I used to see continually in the newspapers statements like these: "Rates sadly demoralized," "Agreement between railroad officers to restore rates," and everything of that sort. I said to my associates, "Gentlemen, this thing will not do; we must stop the payment of these rebates." They said, "How are you going to stop the payment of the rebates?" I said, "We are going to call these gentlemen before us; we are going to put them under oath, and we are going to make them admit they paid these rebates, and we are going to use the evidence which we obtain to convict them." We employed Mr. Day, who is now with the Department of Justice. The rates which have been almost uniformly demoralized have been the grain rates from Chicago to the Atlantic seaboard. We called in the chief traffic officials of all these lines and we put them under oath. Now, I would ask these gentlemen, "Are you the chief traffic official of this road?" "I am." "Would you know it if a rebate was paid?" "I would." "Are any rebates paid on your road?" "There are none." "The rates are absolutely maintained?" "They are."

Well, every traffic official who came before us in that capacity—and we prosecuted it for three days at Chicago—testified that rates were absolutely maintained.

Senator NEWLANDS. How many did you have before you?

Mr. PROUTY. We had the official of every trunk line leading from Chicago to New York.

Senator NEWLANDS. Did you have the officials of the lines west of Chicago?

Mr. PROUTY. Not at that time.

Senator NEWLANDS. I understand that most of the rebates were there.

Mr. PROUTY. I do not know whether they were or not. Now, they all testified the rates were absolutely maintained from Chicago to New York. Two years after that I examined the chief traffic officer of the Baltimore and Ohio, and of the New York Central—do not think it was the same man in either case—and of the other lines, and they all testified that rates had never been maintained. I would

like to know what I could do as Interstate Commerce Commissioner to make those gentlemen admit that they paid rebates, and, as they would not tell that they paid rebates, I would be glad to know how I could obtain evidence that they did.

Having gotten through, Senator, with the lines between Chicago and New York, we said perhaps this is not a fair sample. Now, we will go up in the Northwest, and we will take the lines that carry flour from Minneapolis east. We instituted another investigation, and we went up into the Northwest, and we put the railroad and the traffic men of the millers on the stand, and they all swore without exception that the rates were absolutely maintained. One traffic official there, when it got a little bit hot for him, became sick enough so that he threw up his dinner, but he did not throw up the truth. We could not get the admission from any man there that they had ever paid a rebate. We said, "This does for the East; now let us go West." So we went into the Pacific coast, to Portland, Oreg., and went over exactly the same performance there. We made one man admit that he burned up his books rather than to present them to the Interstate Commerce Commission, but we could obtain no admission of the payment of any rebate there. "Well," we said, "gentlemen, this is a farce. This makes light of serious matters. We will not proceed further in this direction."

Now, it so happened that there was a traffic association in the Southwest, called the St. Louis Southwestern Traffic Committee, or traffic association. It has had a great many different names, and I do not remember the exact name under which it went at that time. This traffic association incorporated in the articles of association the provision that officers of that association should, if possible, obtain evidence of the payment of rebates and present that evidence to the Interstate Commerce Commission. They hired a young gentleman by the name of Camden, and put him at the head of the association. They not only made him subscribe to the articles of association, but they put him under oath, and compelled him to swear that he would observe that provision to lay before the Interstate Commerce Commission any evidence that he got. He had not been there more than two or three weeks before he found some evidence to the effect that the Baltimore and Ohio Railroad had been departing from the published rate. He supposed his oath meant something, and he came up to Washington and laid that evidence before the Interstate Commerce Commission, and we began proceedings against the Baltimore and Ohio Railroad.

Now, that was the first instance from the time I came onto the Commission that we could obtain any evidence of a departure from the published rate.

Senator NEWLANDS. Then what happened?

Mr. PROUTY. I am going to tell you what we did then. We directed the Baltimore and Ohio road to file a statement showing what shipments they had made during a certain time, and the rate of freight paid them for the transportation. It was necessary to do that in order to connect up with the evidence that we had. Thereupon they filed a statement showing a great many departures from the published rate. At the same time they sent to the Interstate Commerce Commission a letter. They said in that letter—now, I

repeat from memory; I may get it a little wrong—but they said, in substance, in that letter, that the roads in the territory in which they operated had habitually departed from the published rate; that was after they had sworn they maintained the published rate in that territory: "Now, for us, the receivers of the Baltimore and Ohio, we have gotten through, but we can not maintain the rate unless our competitors maintain the rate. We propose from this time on to maintain the rate ourselves, and we propose to see that they maintain it; but in order that we may do that, we ask you to call a conference of the railroad presidents in trunk-line territory."

Now, the Commission did, acting on that suggestion, invite every president of the trunk-line railroads to come to Washington. They came, all of them. Mr. Calloway was there for the New York Central; Mr. Thompson was there for the Pennsylvania Railroad; Mr. Murray and Mr. Cowan came there for the Baltimore and Ohio; Mr. Harris came from the Philadelphia and Reading, and Mr. Walters was there for the Lehigh Valley. I do not remember them all, but they all came there. Those gentlemen all said: "It is true; we have departed from the published rate. We did not like to do it, but we did. But we have gotten through. We shall depart from the published rate no more. If you gentlemen will only let bygones be bygones, we assure you that in the future there will be no discrimination under this law."

Well, I expect, perhaps, that we ought to have said to them, "You are a pack of consummate liars; we do not believe anything you say, and we will prosecute you if we can." But we did not think so; we believed exactly what they said, and we told them we did, and they went home and no prosecutions were begun on the facts which we had against the Baltimore and Ohio. Then we called, at the request of certain persons in the West, the presidents of all those lines, and they all came. Mr. Marvin Hewitt came; Mr. Bird, of the Milwaukee line, came; in all, 30 or 40; and we had the same sort of an experience meeting again. They all said: "We have sinned, but we have got through. Now, gentlemen, just help us to maintain the act to regulate commerce." We said: "We will do it." And they went home.

Now, I do not wish to pass any criticism at all on these gentlemen. I have not the slightest doubt that they meant precisely what they said. I think I know something about the difficulties under which they labored; but they did not maintain those rates for a month, probably. The thing went along in that way until the fall of the year 1901, or about one year after this first meting with the presidents. We then obtained evidence of a departure from the published rate in the transportation of packing-house products and grain. They wanted to say once more: "We will stop if you will let us go." But we said: "No, gentlemen, we have heard this story once," and went to the court and obtained injunctions against these roads, because of departure from the published tariff. We passed the evidence which we had over to the Department of Justice. I want to say most emphatically that since I have been on the Interstate Commerce Commission, with the single exception of the evidence which we had against the Baltimore and Ohio Railroad, I have never

known of any way we could obtain evidence which I have not used, and if the evidence could be obtained and transmitted to the proper person——

Senator NEWLANDS. The Commission had no doubt that rebates were going on all this time?

Mr. PROUTY. I have not the slightest doubt.

Senator NEWLANDS. You so stated in your report?

Mr. PROUTY. That was stated in our reports, and it has been so admitted since. These same men have admitted it since.

Senator NEWLANDS. You instituted this action to enjoin the company in equity?

Mr. PROUTY. We did.

Senator NEWLANDS. These western roads?

Mr. PROUTY. And the eastern roads, too; some of them.

Senator NEWLANDS. The trunk lines?

Mr. PROUTY. Some of the trunk lines. We took all those that we had any evidence against.

Senator NEWLANDS. You enjoined them from this?

Mr. PROUTY. For a departure from the published tariff.

Senator NEWLANDS. Now, we have been told that the judge himself was doubtful as to his jurisdiction in that case.

Mr. PROUTY. Well, now, the Commission was very doubtful as to the jurisdiction in that case, but we thought we ought to try it. It might be of some service. We were bound to do all we could to stop that thing, and we adopted that plan.

Senator NEWLANDS. The companies themselves made no contest, did they?

Mr. PROUTY. Why, yes; they objected. It was a nominal objection, and we were really asked by some lines not embraced in the injunction to be taken in. They wanted to be enjoined.

Senator NEWLANDS. But there was no real contest either in the court or in the appellate court, was there, over the question of jurisdiction? And was the injunction granted before the Elkins Act was passed?

Mr. PROUTY. The injunction was granted before that act, and the provision you referred to had gotten into that act, because of the doubt we entertained on the Commission as to the jurisdiction of the court. Judge Logan asked me to draw the bill, and in doing that I incorporated that provision, because of the doubt we had on the Commission, and while Judge Logan threw my bill away and drew one of his own, he retained that provision and added to it the provision that other parties might be brought in.

Senator NEWLANDS. Now, Mr. Prouty, if your Commission came to the conclusion that you could bring a bill of injunction to restrain these companies from departing from the published rate, why could it not have brought or instituted the same sort of suit to enjoin these companies from discrimination of all kinds which are forbidden by the interstate-commerce act?

Mr. PROUTY. Because, in the first place, the court is simply required to enforce a positive enactment of the statute. The statute says you shall publish your rate and you shall maintain that rate. Having published the rate, the law itself compels the observance. All the court is required to do is to compel the compliance with the statute.

In the other case the court must, to correct the discrimination, determine the rate for the future.

Senator NEWLANDS. Now, the court must determine. That is your contention?

Mr. PROUTY. That is my contention.

Senator NEWLANDS. But you never instituted such a proceeding, did you?

Mr. PROUTY. Certainly; we brought that Missouri Pacific case.

Senator NEWLANDS. Was that before the passage of the Elkins Act, in 1903?

Mr. PROUTY. That was done before I came on the Commission; I found that suit pending when I came on the Commission.

Senator NEWLANDS. And that was an action for injunction?

Mr. PROUTY. Yes, sir.

Senator NEWLANDS. To prevent the railroads from charging a greater rate to Wichita than to Omaha?

Mr. PROUTY. Yes, sir.

Senator NEWLANDS. Now, what is the result of that case? Did the court declare it had no jurisdiction?

Mr. PROUTY. The courts below took jurisdiction; before the case was decided in the Supreme Court of the United States the Elkins bill had been passed. As I understand the case, the court said it would have had no jurisdiction but for the Elkins bill.

Senator NEWLANDS. So that entirely absolved you then from any failure to attempt to employ the process of injunction?

Mr. PROUTY. We did attempt to employ the process of injunction.

Senator NEWLANDS. In that one case?

Mr. PROUTY. In that case. Of course, we would not have employed it in any other case until we had a decision in that case.

Senator NEWLANDS. That case was instituted in what year?

Mr. PROUTY. All I know about it is this: The case was pending when I came onto the Commission, and we made on two or three occasions special efforts to hurry that case along, but it seemed to meet with a series of misfortunes.

Senator NEWLANDS. I understand that it is contended by some of the representatives of the carriers here that the courts had ample jurisdiction in this matter. Just as they had the jurisdiction to enjoin against this system of rebates, so they had jurisdiction to enjoin against discrimination, and that the Interstate Commerce Commission failed in the discharge of their duties in not instituting any such proceedings. You say you instituted one in 1902?

Mr. PROUTY. Yes, sir.

Senator NEWLANDS. Just about a year after the passage of the act of 1901?

Mr. PROUTY. Yes, sir.

Senator NEWLANDS. Are there any other suits of that nature?

Mr. PROUTY. No.

Senator NEWLANDS. And you had to wait for five years before you got a determination of that?

Mr. PROUTY. More than five years.

Senator NEWLANDS. Would it not have been well to have brought other suits of the same nature?

Mr. PROUTY. We were very doubtful about the jurisdiction. I

have never been able to see if the court took jurisdiction it would help matters. I do not see how the Commission is in any better shape now with the decision than without.

Senator NEWLANDS. We will admit that. You assume that you have a right to go into court to ask for an injunction concerning a railroad discriminating in favor of one place as against another, and that discrimination consists of exacting a rate of 5 cents a hundred, say, in one case, less than in another. Now, that is the discrimination complained of, and in determining that case you must determine the amount of the discrimination necessary?

Mr. PROUTY. Yes, sir.

Senator NEWLANDS. If, then, the court is to grant full and adequate relief, would it not necessarily include the determination of what a fair rate was, and an injunction against anything in excess of that rate?

Mr. PROUTY. That is my contention.

Senator NEWLANDS. Has not the court yielded to that contention?

Mr. PROUTY. The court would have no power, Senator, to grant that relief, because it has no power to determine for the future what is a fair rate.

Senator NEWLANDS. Has the Supreme Court ever declared that?

Mr. PROUTY. I understand it has.

Senator NEWLANDS. I presume, of course, it will be admitted that the Supreme Court can not fix a rate.

Mr. PROUTY. But it fixes that rate.

Senator NEWLANDS. The Supreme Court has the power to determine what is a reasonable rate. It has the power to protect against extortion, and that necessarily means the determination of what is a reasonable rate, it seems to me. I will ask you whether the Supreme Court has ever passed upon that question?

Mr. PROUTY. The Supreme Court has never, to my knowledge, passed upon that question in that form. The Supreme Court has said in several cases that the fixing of a rate for the future was an administrative or a legislative function. It has held in case of the Commission itself that where the Commission attempted to do precisely what you say the court ought to do that would be a fixing of a rate by the Commission and not within the power of the Commission. Now, if that is a fixing of the rate when it is done by the Commission, I fail to see why it would not be a fixing of the rate when done by the court.

Senator NEWLANDS. And that has been your assumption, and that has been the reason why you have not brought many of these injunction suits?

Mr. PROUTY. Yes, sir.

Senator NEWLANDS. Now, as to that Wichita case, it went back to the inferior court, did it not?

Mr. PROUTY. Yes, sir.

Senator NEWLANDS. How long ago?

Mr. PROUTY. Well, I do not remember; two or three years ago.

Senator NEWLANDS. Has that case been terminated?

Mr. PROUTY. No; it has not.

Senator NEWLANDS. Well, why not?

Mr. PROUTY. So far as I am concerned—my associates may speak

for themselves—I never understood that the Elkins bill—I say three years—I have never understood that the Elkins bill added anything to our power to create a discrimination in a published schedule, and therefore my attention has never been called to that matter. I have also assumed that the decisions of the Supreme Court of the United States made since the institution of that suit were rather conclusive of the fact that that discrimination alleged in a suit was not an undue discrimination, and therefore not in violation of the act to regulate commerce. In other words, when we began that suit we held that the only sort of competition which would justify charging less at a more distant point than at an intermediate point was that of some carrier over whom the interstate law exercised no control.

Now, the Supreme Court of the United States has said that all kinds of competition must be taken into account—competition with other railroads which are subject to the jurisdiction of the railway act, or competition of markets; everything of that kind must be taken into account. The Commission has held in other cases, and it is undoubtedly true, that there are competitive conditions on the Missouri River which justify a lower rate than is made to Wichita. And I assume that the thing complained of in the Missouri case was not in violation of law. That has been my reason for not proceeding in that case. Of course, I have had no doubt of the power of the court to proceed with that case. I think the court should do with that case exactly what the Commission could do by law, neither more nor less.

Senator NEWLANDS. Then you think it could not grant the relief necessary?

Mr. PROUTY. I think it could not grant the necessary relief unless, as Senator Dolliver suggested, the only thing to be done was to restrain the Missouri Pacific from charging a higher rate to Wichita than it charged to Omaha. If that was the only thing to be done, I am not at all clear that the court might not secure that by injunction.

Senator NEWLANDS. But your opinion is that it could not determine that an intermediate rate was a reasonable rate and enjoin everything above that?

Mr. PROUTY. I do not know. I do not think you could say that the rate to Wichita is 5 cents above the rate to the Missouri River.

Senator NEWLANDS. Could you not test that in the Supreme Court?

Mr. PROUTY. I could not say it could not be tested. It has been tested. I say if the court could exercise the jurisdiction over anything of that sort it would be as well for this committee to write into a bill that statement.

Senator DOLLIVER. We did that in the Elkins law, or tried to do so.

Mr. PROUTY. I did not understand it that way.

Senator NEWLANDS. Let us refer to the language of the Elkins Act. The Elkins Act was passed in 1903. Section 3 of the Elkins law states that—

That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court sum-

marily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the former pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations party thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of such petition, said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, or process may be enforceable as well against the parties interested in the traffic as against the carriers, subject to the right of appeal, as now provided by law.

Now, there a clear power is given to the court to direct and require a discontinuance of such discrimination. I understand that your contention is that, according to decisions of the Supreme Court, a discrimination of this kind between localities because of competition of any kind is not forbidden by the law?

Mr. PROUTY. Oh, no. The discrimination might be forbidden by the law and might not. That, under the decision of the Supreme Court, is a question of fact. Now, my point is that the court has no power to inquire whether or not that discrimination is undue and to prescribe the remedy.

Senator NEWLANDS. It says that the court shall have the power to require a discontinuance of discrimination. Now, if the discrimination consists in charging a higher rate for the shorter distance than for the longer distance, can not the court, under this law, require a discontinuance of such discrimination?

Mr. PROUTY. I think it could in that case, because in that case the statute prescribes the rule by which the court acts. The statute says that the carrier shall not charge more for the short than for the long haul. Now, if the carrier did get more for the short than for the long haul, I have no doubt that the court under that provision of law could stop the discrimination, could stop the higher charge at the intermediate points. But the fourth section contains another provision, which is that it may charge more at the intermediate point if circumstances and conditions are different at the more distant point. Now, if circumstances and conditions were such that the carrier might properly charge a higher rate at the intermediate point, I do not think the court could determine how much higher that rate should be; and if the rate was higher than it should be, could not therefore reduce the rate because there is no standard by which it acts?

Senator NEWLANDS. And yet that precise point has never really been determined by the court?

Mr. PROUTY. Nearly, Senator. Let me tell you what has been determined. The fifteenth section of the act provides that the Commission shall hear these complaints. Having heard the complaint, if they find that the carrier is in violation of the law, they shall order the carrier to cease and desist from such violation. That is the power of the Interstate Commerce Commission.

Senator NEWLANDS. Where do you say that is?

Mr. PROUTY. That is in the fifteenth section, on page 15 of what I have here. The Interstate Commerce Commission is given the power to order the carrier to cease and desist from that violation. Now, the Supreme Court has held that that does not give the Interstate Commerce Commission power to remove or make an order which will remove a discrimination of that sort. So I say the court has

come mighty near to holding that the language in the Elkins bill does not give the court that power. And you will understand, Senator, that gives no power at all over the unreasonable rate.

Senator NEWLANDS. If in this statute we could give the court the power to determine that without giving the Commission the power to fix the rate, would the remedy, in your judgment, be adequate for unjust discrimination?

Mr. PROUTY. I think it would be adequate for unjust discrimination if the court had any constitutional right to exercise its remedy. The court has no constitutional right to do it, and could not exercise that power. That is my point exactly.

Senator NEWLANDS. There are proceedings, are there not, where the railroad has sought to enjoin the enforcement of rates which they declared were unreasonable law?

Mr. PROUTY. Yes; that is a common proceeding.

Senator NEWLANDS. That is a common proceeding against State commissions?

Mr. PROUTY. And against State legislatures.

Senator NEWLANDS. Have any proceedings been taken against the action of the Interstate Commerce Commission?

Mr. PROUTY. No occasion for that kind of proceeding, because the rates of the Interstate Commerce Commission can only be enforced by the court upon application by itself or somebody interested.

Senator NEWLANDS. Such proceeding would be by injunction, would it not?

Mr. PROUTY. By proceeding in equity; and I suspect the court would, in connection with that, proceed to grant an injunction.

Senator NEWLANDS. I understand your contention is a rate that is unreasonable is destructive of the rights of property of the carrier, and a rate that is unreasonable is destructive of the rights of property of the shippers?

Mr. PROUTY. Yes, sir.

Senator NEWLANDS. Now, why should not the shipper have the same right also to proceed by injunction?

Mr. PROUTY. He should.

Senator NEWLANDS. Has he that right now?

Mr. PROUTY. Well, that is a question which has not been decided yet. Judge Niles held that he had not, and Judge Speer held that he had.

Senator NEWLANDS. The matter has never been decided by the Supreme Court?

Mr. PROUTY. It never has gone to the Supreme Court.

Senator NEWLANDS. Has the Interstate Commerce Commission itself never sought to bring such a suit?

Mr. PROUTY. I do not say that the Interstate Commerce Commission would have any such power. Apparently the circuit or Federal court only entertains suit in behalf of the Interstate Commerce Commission when the statute permits it. Now, there is no statute which permits that sort of proceeding. I think there ought to be a statute which would permit the Interstate Commerce Commission to file a petition and ask for an injunction. In the case of an advance the court would probably have the power to grant an injunction, temporarily pending proceedings before the Commission, although it would have no power to permanently reduce the rates.

Senator NEWLANDS. Then, if the Interstate Commerce Commission was authorized to institute such a suit, would this not meet all these questions as to extortionate rates?

Mr. PROUTY. If the court had the further power to determine whether that rate was reasonable or unreasonable, and you awarded final process in the premises, provided the court was a tribunal competent to exercise that function. I do not think it would amount to anything to give to all the courts of the United States that jurisdiction. I think it would answer the purpose if you could give some special court that jurisdiction.

Senator NEWLANDS. A special court of transportation?

Mr. PROUTY. I think so, if you could give it that jurisdiction.

Senator KEAN. Could you do so?

Mr. PROUTY. I do not think you could. I have been saying here to-day that you could not invest a court with power to fix a rate for the future.

Senator NEWLANDS. We are proceeding under the fourteenth amendment, which declares property shall not be taken without due process of law. You said that a carrier has a right to go into court to enjoin the enforcement of a tariff fixed by the Commission on the ground that it is destructive of the right of property.

Mr. PROUTY. Yes.

Senator NEWLANDS. And, on the other hand, you say the fixing of an extortionate rate is destructive of the rights of property of the shipper. If the carrier has a right to go into court under the Constitution, why would not the shipper have the right, if the wrong complained of is the same in each case?

Mr. PROUTY. It is not the same thing in each case.

Senator NEWLANDS. It would be destructive of the rights of property.

Mr. PROUTY. That is true. Say that I go out here and take your property. It is destructive of your property, but you could not bring suit under the fourteenth amendment. The taking of your property or my property by a railroad rate is with due process of law. The State has authorized that railroad to make a rate, to impose a rate upon me, and the State must provide that the rate is a just and reasonable rate.

Senator NEWLANDS. So that you think under existing conditions a remedy could not be given to the shipper which is now clearly within reach of the carrier, when his property rights are unjustly affected?

Mr. PROUTY. I think so—that is, I think the shipper should have a remedy, but it must spring from a different source.

Senator NEWLANDS. How about the powers of conciliation? Do you think that those can be exercised to advantage?

Mr. PROUTY. Oh, yes. I think the best part of the work of the Interstate Commerce Commission for the last eight years has been in the exercise of that power and in the conducting of its investigations. That has been about the only work it could do.

Senator NEWLANDS. Would you have that power rest in this board that you speak of—by some designated as an appellate board?

Mr. PROUTY. No.

Senator NEWLANDS. You would have that authority conferred upon

a special bureau or upon the other branch of the Interstate Commerce Commission?

Mr. PROUTY. If you are going to organize an appellate commission, I see no objection to leaving the present Commission as it is exactly—that is, allow it to discharge all the functions it discharges now.

Senator NEWLANDS. And you would have them exercise this power of conciliation, leaving to others the power of judging?

Mr. PROUTY. Simply the power to hear and determine.

Senator NEWLANDS. The criticism is made that out of quite a number of cases—I believe there are 120 involving decisions of the Interstate Commerce Commission—that the courts have overruled the Commission in almost every case, except four or five. What explanation have you to make of that?

Mr. PROUTY. Well, as I said, the only explanation is that the Commission was wrong. But you can not understand what the court thought without looking into the case itself.

Senator NEWLANDS. First, is that the fact?

Mr. PROUTY. Now, I can not give you the exact figures. We have sent up here a statement which shows exactly what the fact is. But I would say probably that out of 35 or 36 cases in some 27 or 28 cases the contention of the Commission has not been sustained.

Now let me illustrate what that means. Six of those were cases in which the Supreme Court decided that the Commission had no power to fix a rate for the future. The Commission had decided that a certain rate was unjust. It had declared that certain other rates would be just. It had ordered the carriers to observe that other rate. Now, the court held in those six cases that the order of the Commission was unlawful, because it exceeded the power of the Commission. The court did not hold, and the court has never held, that the rates of the Commission in those six cases were unreasonable. It has never decided that the judgment of the Commission upon the question of fact was not right. Now, I say, as a practical matter, that the thing which the Interstate Commerce Commission undertook to do has got to be done, and the proposition to-day is to give the Interstate Commerce Commission power to do exactly that thing which the court said had not been given to it by the original act. So it does not seem to me that it is anything particularly to the discredit of the Commission to have made that holding and to have that holding reversed by the Supreme Court.

Senator NEWLANDS. Were there any other cases in which the decision went off practically on the same point?

Mr. PROUTY. Not on this same point.

Senator NEWLANDS. Not on this point?

Mr. PROUTY. I think if you will look through those cases you will find in fourteen or fifteen cases the question at issue was the long and short haul clause. The Commission had held that competition of carriers subject to the law did not justify departure from the fourth section. The court decided that it did. Therefore, the order of the Commission was unlawful, but it never has been held by the Supreme Court that the thing which the Commission attempted to do in that case, as a matter of fact, ought not to be done. Now, you take the import rate case. The question involved there was just this: The Texas Pacific charged on articles transported from New Orleans to

San Francisco perhaps one-quarter when those articles originated in Liverpool as much as they did when those articles originated in New Orleans. The Commission had held that its purview was bounded by the ocean and it could not look beyond the ocean to find out what competitive tariff governed that traffic. The Supreme Court simply said, " Your application of the law is wrong. You must consider the competitive condition abroad as well as the competitive conditions at home."

Senator NEWLANDS. Outside of these cases, however, that were contested in the courts there were very numerous cases decided by you that were accepted by the railroads?

Mr. PROUTY. In the early days of the Commission practically all its orders were complied with. At the present time, with the present state of public sentiment, any order of the Interstate Commerce Commission which does not involve too much to a railroad is pretty certain to be complied with, just as we are pretty certain that there will not be any advance in rates as long as this excitement concerning rates keeps up.

Senator NEWLANDS. Can you give any idea of the number of cases that you have decided in which the railroads have complied practically with your decisions?

Mr. PROUTY. Well, now, we have sent up here a statement which shows exactly the number, and therefore I do not like to guess at it. In the early days they were practically all complied with. There are a great many cases in which the railroads did not literally comply with the decision where the decision was substantially complied with, and I think if it could be done the railroads ought to have that privilege. They sometimes prefer to comply in substance in one form rather than in another. For example, the Commission held the differential between New England and New York should be 10 per cent of the rate between Chicago and New York. Now, the railroads did not comply exactly with that order, but they put in an arbitrary differential which amounted to a substantial concurrence with it. They preferred to make it in cents a hundred pounds rather than 10 per cent.

Senator KEAN. That was satisfactory, do you think?

Mr. PROUTY. That was satisfactory.

Senator DOLLIVER. Did anybody dispute you?

The CHAIRMAN. Did anybody dispute your rights to make that order?

Mr. PROUTY. No; that was in a day when they were not disputing our right. The differential between New England and New York—the Commission held that the differentials ought not to exceed 10 per cent of the New York rate. They were reduced, and have been ever since. When they were once put into effect, actually complied with by the railroads, they themselves saw they were right, and they have never been taken out.

Senator NEWLANDS. Mr. Prouty, has the Commission the power to investigate the books of the railway company?

Mr. PROUTY. The Commission has the power to compel the railway company to produce its books; it has the power to compel the production of those books in court, but that does not amount to a practical inspection of the books.

Senator NEWLANDS. Do you understand the Commission would have the power in connection with that to have an expert examine the books with a view to ascertaining whether or not the rebates were granted?

Mr. PROUTY. I do not think the Commission would have the power to send an expert into the office of a railroad to examine its books. I do expect that any railroad company in the United States would probably permit an expert to examine the books of that company if we asked them to do so.

Senator NEWLANDS. It is contended by the representatives of the carriers here that the rebate must show in some form or another, and it is contended, as I understand it, that if the Commission had exercised its powers of investigation and not simply contented itself with the examination of the traffic managers it would have gotten evidence of these rebates. Now, how about that?

Mr. PROUTY. Now, it may be that we could have shown in some way that those gentlemen were not telling the truth. It is possible we might have done so. But, in my judgment, it would have amounted to nothing to examine their books unless you had the power to prescribe the method in which those books should be kept. We did examine their books. We ordered books brought into court. We ordered them to file the fullest statements. We spent a week in the examination of their books and movement of traffic, and everything of that sort.

Senator NEWLANDS. With the view of discovering rebates?

Mr. PROUTY. Yes, sir.

Senator NEWLANDS. And you could not ascertain anything from them?

Mr. PROUTY. No, sir; I desire to say that there has been no time since I became an Interstate Commerce Commissioner when if any strong trunk line operating between Chicago and New York had said, "We will pay no more rebates ourselves and we will not suffer our competitors to pay rebates." the payment of rebates in that section would not have stopped. It might have cost the railway something, but rebates would have ceased. Nor has there been a time since I have been an Interstate Commerce Commissioner when if the traffic officers of the trunk lines between Chicago and the Atlantic seaboard would have consented to tell the truth under oath, the Interstate Commerce Commission would not have stopped the payment of rebates. I have been able to discover no way in which to make them tell the truth.

Senator NEWLANDS. In regard to the future, will it not be possible for them to commence again this system of rebates?

Mr. PROUTY. I think they pay rebates now.

Senator NEWLANDS. You think they do?

Mr. PROUTY. I think they do.

Senator NEWLANDS. Do you think it is as extensive as it was?

Mr. PROUTY. Oh, no. I think that the payment of rebates, as such, practically ceased when the Elkins bill went into effect, and it has only been resumed in aggravated instances where apparently there could not be anything else done. For example, there are certain lines which handle grain from the Missouri River to Chicago and the East. Those lines have buyers on their roads, which own elevators at terminal points. They allow an elevator charge to their buyers. Certain other lines which have no elevators, so that they

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are unable to make that allowance of an elevator charge to their buyers, I think have at times been compelled to pay a rebate which amounted to that elevator charge.

Senator NEWLANDS. Or lose the business?

Mr. PROUTY. Or lose the business. That is an example of what I mean. I could not produce any evidence of that. If I could it would be my business to turn it over to the Attorney-General. I have no doubt that rebates to a greater or less extent are paid in many parts of this country. And if it turns out, as the railroads contend, that the disclosure by any officer of a railroad gives the company its exemption under the Elkins bill, your law is good for nothing. They can resume the payment of rebates whenever they desire.

Senator NEWLANDS. Mr. Hill, I believe, stated that this matter of rebates would require constant vigilance.

Mr. PROUTY. If you want to stop the payment of rebates, Senator, in my judgment you have got to provide certain things. In the first place you have got to take care of the terminal railroad. You have got to take care of the private car lines, although that is very much overdrawn just at the present time. There is not as much to this private car line as the newspapers and magazines talk. You have got to take care of the elevators. You have got to do that. Then, in my judgment, you have got to provide that some tribunal shall have authority to prescribe the form in which the books of these railroads, which refer not only to their accounts, but the movement of their traffic, shall be kept, and to further provide that that tribunal may at any time examine those books.

Now, there is just one thing further that I think might be done, and which should be done, perhaps, as the last resort. You can provide that the man who receives and pays out that money shall be an official of the Government. He shall not have anything to say as to how the money is paid out; he shall have nothing to do with the administration of the road, but he shall have the right to receive and pay out that money. Now, I think that would stop it.

Senator DOLLIVER. Unless they got possession of the man.

Mr. PROUTY. That might be so. Still, gentlemen, that will not necessarily stop it.

Now, I know some years ago that a trainload of wheat was transported from Minneapolis to Chicago for nothing. There was simply no record of that shipment on the books of the railroad company which took it. They carried that trainload of wheat down there to Chicago, and there was no record of it at all.

Senator CULLOM. What object had they in doing that?

Mr. PROUTY. They wanted to prefer the man that had the wheat. They did not want to pay him a rebate on his shipments, but gave him that shipment for nothing.

Senator NEWLANDS. What do you regard the greatest evil in connection with transportation—this question of rebates or this question of discrimination under the published tariff as between localities?

Mr. PROUTY. In the past the rebates have been the most serious question. My own opinion is that in the future the discrimination in the tariff itself will be the most serious question. Go into New England to-day, and you will find that the tariff puts absolutely into the possession of the Standard Oil Company every foot of the terri-

tory of the New York, New Haven and Hartford Railroad. You will find that class of discrimination all through this country. I think in the future that class of discrimination will probably be more serious than the question of rebates. That is really not a discrimination against localities. That is discrimination as between shippers. That is the adjustment of a tariff in such a way as to prefer one shipper to another.

Senator NEWLANDS. Do you think there is any great danger from the fact that men who are largely interested in these great industrial corporations control certain railway lines?

Mr. PROUTY. I do regard that as the very gravest danger.

Senator NEWLANDS. Is it possible by the utmost vigilance to secure an absolute and square deal as amongst shippers where great producers control the lines of transportation?

Mr. PROUTY. That is a broad question. You ask if it is possible. It would be pretty nearly possible. It would be possible if the Government took these railroads and operated them to give everybody a square deal. I doubt if it will be done otherwise.

Senator NEWLANDS. So that, in your judgment, the only way we will ever secure absolute equality of service as between shippers would be under Government ownership?

Mr. PROUTY. Why, equality is a thing we do not often secure anyway. I do not think there is any trouble in securing a condition of things that is good enough without Government ownership. If you want absolute equality, you would probably get it under Government ownership, although that is by no means certain.

Senator NEWLANDS. Do you think officials of the railroads could be controlled certain ways—for instance, bribery, etc.?

Mr. PROUTY. Not just that. Somebody has got to determine what these rates are. Even if the Government owned the railroads it is not at all certain that the rates would be without discrimination. It is pretty certain that everybody would pay the same rate on the same goods in the same shipments.

STATEMENT OF MR. BROOKS ADAMS.

The CHAIRMAN. Will you please state your name, residence, and occupation?

Mr. ADAMS. My name is Brooks Adams, of Quincy, Mass.

The CHAIRMAN. Whom are you representing?

Mr. ADAMS. I came here, Mr. Chairman and gentlemen, to represent the Chamber of Commerce, of Spokane, Wash. The city of Spokane considers that it has had for many years a very considerable grievance which goes to the very basis of its prosperity, and it has never been able to get any adequate relief. I have here an abstract of the schedule of the comparative rates of Spokane and the so-called North Pacific ports. I will not trouble you with reading them, because I think it is entirely unnecessary.

The CHAIRMAN. You can file them as part of your statement.

Mr. ADAMS. I will simply file it as part of my statement. I have also here a statement of various cases of what they call discrimination, but which I consider myself possibly would be due to local considerations. They are cases, however, of hardship. I would like to file those cases.

The CHAIRMAN. They can go in as part of your statement.

Mr. ADAMS. I took by hazard out of this long schedule, six articles of prime necessity. They were such things as clothing, calicoes, cotton, and various forms of iron, such as iron pipe. bridge iron, and so on, and I calculated the rate of preference which the seaports, such as Seattle, Tacoma, and so forth, have over Spokane, and it averaged about 80 per cent. Thus Spokane pays about $1.80 for shipments from Chicago, to $1 paid by Tacoma or Seattle. The hardship of this is obvious. I have been for a long time consulted about these questions. In spite of this hardship to Spokane, I never conceived that it was possible for us to bring a bill of any kind, or legal complaint, which would probably receive attention by a court. The difficulty is this. They set up, of course, water competition at the seaports. I suppose that such competition does exist. Anyway, they established it or pretended to establish it, in a case which has been already tried.

Now, our difficulty is that under the decisions of the Supreme Court, as Mr. Prouty has just pointed out, competition suspends the fourth clause and leaves the railroad substantially free to make what discrimination it pleases against the interior towns—that is, against the helpless, where there is no competition. Spokane is, as you know, a great railroad junction of the Northwest, but competition has been suppressed by agreement between the lines. Therefore Spokane is quite helpless so far as competition goes, and railroads can discriminate against her, so far as I can see, to almost any extent. The La Grange case, it seems to me, covers the case absolutely, and that case of Calloway's turned as follows: Calloway set up that the rate to La Grange itself was unreasonable. Now, Calloway proved that the rate from New Orleans to Atlanta was 4½ cents, or something like that, against the average rate through the whole country of about 8 mills, and that the local rate from Atlanta to La Grange was 11 cents, and to Fairburn, 24 cents a ton a mile; and the Supreme Court held, as far as I can understand the decision, that the 24 cents a mile was not necessarily an unreasonable rate for a railroad to charge.

Senator DOLLIVER. Who decided that?

Mr. ADAMS. The Supreme Court of the United States. Naturally, that did not give us much opportunity to set up an unreasonable rate, because the rate must be unreasonable.

The CHAIRMAN. What case was that?

Mr. ADAMS. That was the Calloway Case.

Senator CLAPP. The Interstate Commerce Commission *v.* The Louisville Railway, page 273.

Mr. ADAMS. It is the Louisville and Nashville *v.* The Interstate Commerce Commission. That is the way in which the case came up. It is the most interesting case, I think, that has ever been reported in the books.

Senator DOLLIVER. How did the Interstate Commerce Commission decide it?

Mr. ADAMS. The Interstate Commerce Commission relieved Calloway, of course.

Senator DOLLIVER. Did they declare the rate unreasonable?

Mr. ADAMS. Why, yes; naturally they declared the rate unreasonable.

Senator DOLLIVER. And directed its discontinuance?

Mr. ADAMS. I have forgotten the precise judgment, but they relieved Calloway as far as they could. The Louisville and Nashville appealed the case, and the competition existing at Atlanta, observe you, at once relieved the road from the fourth clause, and then the question came for Calloway to prove an unreasonable rate, and 24 cents a ton a mile was held not to be an unreasonable rate.

Senator NEWLANDS. And 24 cents a mile was held not to be an unreasonable rate?

Mr. ADAMS. Yes; they did not absolutely hold that; but taking the evidence before the Commission—and the chairman will correct me if I am wrong—the rate to Fairburn was 24 cents a mile.

Senator DOLLIVER. Where is this Fairburn?

Mr. ADAMS. Fairburn is 17 miles back—17 miles west of Atlanta, between Atlanta and La Grange. La Grange is 75 miles back.

Senator DOLLIVER. Have you ever had a case from Spokane bringing the reasonableness of the rate to the attention of the Interstate Commerce Commision?

Mr. ADAMS. No, sir; I have not brought any case like that, because after very long deliberations I concluded that in the face of this Calloway case it was a waste of my client's money in point of fact to advise that sort of thing.

Senator CLAPP. Are you a lawyer by profession?

Mr. ADAMS. I am a lawyer.

Senator CLAPP. Have you read the case of The Interstate Commerce Commission *v.* The Louisville Railway?

Mr. ADAMS. That is The Interstate Commerce Commission *v.* The Louisville and Nashville; that is Calloway's case.

Senator CLAPP. Have you read that case?

Mr. ADAMS. Oh, certainly.

Senator CLAPP. You have read the statement as to what?

Mr. ADAMS. Excuse me, but what I said was that there was no evidence before the Commission to prove that there were unreasonable rates. Now, the holding of the Commission, as I understand the Commission's holding in their book, was that the rate from New Orleans to La Grange was unreasonable as a whole, and that these locals of 24 cents and 11 cents were unreasonable as part of it. Their language as reported shows, I apprehend, clearly enough that they supposed they were thus deciding when they wrote their opinion. No judge can, however, certainly know what he means until the Supreme Court has told him.

Senator CLAPP. What they stated lies in the record?

Mr. ADAMS. What they stated was that there was no evidence before the Commission to show whether there were reasonable or unreasonable rates. It is in Mr. Justice White's opinion.

Senator DOLLIVER. That seems like a very high rate.

Mr. ADAMS. What it means is, of course, for the Supreme Court alone to know. It said that there was no evidence before the Commission to show there was an unreasonable rate, and in the Commision's report these various acts were charged. I am not in possession of the record and I do not know what was the actual meaning of the conflict between the Commission and the Supreme Court.

Senator DOLLIVER. Has anybody ever tested the question as to whether the rate from Chicago to Spokane is reasonable or not?

Mr. ADAMS. We tried to test it.

Senator DOLLIVER. How?

Mr. ADAMS. By bringing a suit many years ago. We tried to test the whole question. The case was hung up for five years, and then the case was decided against Spokane by the circuit court of the United States.

Senator DOLLIVER. They decided that the rate was reasonable?

Mr. ADAMS. It was on the fourth clause. They decided that the condition of things at the terminal were such as to suspend the fourth clause, and there was not any sufficient evidence of unreasonableness.

Senator DOLLIVER. Did they introduce any evidence as to whether that rate was unreasonable?

Mr. ADAMS. There was all sorts of evidence put in, but the difficulty is that once the clause is suspended then the road has only this question of reasonable rates. The Supreme Court has only got this question of reasonable rate to pass upon. It is not comparative.

Senator CLAPP. In connection with that last statement which you have made I would ask you if you have examined the case of the Louisville and Nashville Railroad Company *v.* Behlmar (175, U. S.)?

Mr. ADAMS. Yes, sir; I have examined that case. I understand that my statement is substantially the statement of Mr. Prouty.

Senator CLAPP. I am not asking you concerning the statement of Mr. Prouty.

Mr. ADAMS. No; I only meant to say that I am trying to state the thing as he stated it. I am not in the least desirous of taking shelter behind Mr. Prouty or anyone else.

Senator CLAPP. That is all right. Are you familiar with the case of the Interstate Commerce Commission *v.* The Alabama Midland Railway Company? Are you familiar with that?

Mr. ADAMS. I am very familiar with that case.

Senator CLAPP. In the face of those decisions you say that the mere fact of there being competition there takes the case out of the prohibition as to the long and short haul clause?

Mr. ADAMS. I say, sir, as I understand the last decision of the United States Supreme Court, which is the La Grange case, as I understand that decision—and of course when I say that I am only speaking my individual opinion—that decision means that the Supreme Court says that where competition exists—that is, what they call controlling competition—competition that is real, substantial competition—exists, that ipso facto suspends the operation of the fourth clause.

The CHAIRMAN. You refer to this La Grange case?

Mr. ADAMS. Yes, sir.

The CHAIRMAN. That was the case under the Georgia State law. The court said that it was to be observed that it was shown that the local charges there and to all other parts of the State of Georgia conformed to the requirements of the Georgia State railroad commission.

Mr. ADAMS. I understand that, sir, but this is interstate traffic.

The CHAIRMAN. That was local.

Mr. ADAMS. Those were local rates. But it was interstate traffic made up of the rate from New Orleans to Atlanta and the local back.

The CHAIRMAN. As I understand it, it was based on the finding of the railroad commission to the effect that it was between points in the State of Georgia.

Mr. ADAMS. That was the contention of the Louisville and Nashville. I wish that the chairman of the Interstate Commerce Commission would correct me if I make any misstatements in regard to the findings of his tribunal. But, as I understand, these rates were through rates, made up of the rates from the initial point, New Orleans, to the terminal, Atlanta, and the local back.

Senator NEWLANDS. The local was a State rate, but the whole of it was an interstate rate?

Mr. ADAMS. That is correct.

The CHAIRMAN. But was approved by the State supreme court?

Mr. ADAMS. Excuse me; the whole rate was a rate between terminals and a local added. You understand how these rates are made. Originally, of course, the rates had some relation to distance, but these terminal rates are taken down by competition. Then, when it became cheaper for a man to send from New Orleans to Atlanta and back to La Grange than from New Orleans to La Grange, they made the rate from New Orleans to La Grange by adding to the through rate to Atlanta the local back to La Grange, though goods never went to Atlanta. This is the base system. Therefore, really, no part of the rate was a State rate. The so-called local was simply a method of building up a through rate. Precisely the same conditions prevail at Spokane, and the same reasoning would apply. I have been simply repeating the findings of the Interstate Commerce Commission in their case. I am not responsible for that. They are in their books. Under similar conditions there are a great many discriminations against Spokane. Spokane suffers from these rates in a very serious manner. The inhabitants of Spokane and the Chamber of Commerce instruct me that it is almost impossible, in fact impossible, to carry on manufacturing to a large extent.

Now, the Coast Wooden Pipe Company is an instance in point. They set up a factory for the manufacture of wooden pipe. The details are entirely immaterial. I won't take up the time to go into them. As soon as the wooden pipe manufacture of Spokane began to bother the people in Seattle the railroad changed the relative freight rates of the commodity when shipped east in such a way as to entirely cut off the eastern export. In about eight months that manufacture in Spokane was wiped out. The facts are all detailed here, and they are on file, of course, with you, and I won't take your time detailing them, because the main facts are all that you desire.

The CHAIRMAN. What is the population of the city of Spokane?

Mr. ADAMS. The city of Spokane claims to have 70,000 people. I suppose, really, it is about 50,000 people.

Senator DOLLIVER. Mr. Adams, if it will not interrupt you, let me ask you if this grievance of Spokane is a very old one?

Mr. ADAMS. It is very old; from the beginning.

Senator DOLLIVER. It has been submitted to the Interstate Commerce Commission in other years, has it not?

Mr. ADAMS. It was submitted a number of years ago to the Interstate Commerce Commission and received favorable——

Senator DOLLIVER. Do you understand that the Interstate Commerce Commission criticised, or did they approve, the discrimination against Spokane?

Mr. ADAMS. They condemned the discrimination against Spokane.

Senator DOLLIVER. In what terms?

Mr. ADAMS. It was a long case, but they said that the rates were unreasonable rates.

Senator DOLLIVER. What did the roads do?

Mr. ADAMS. The roads thereupon appealed the case. It was hung up for five years, if I remember right, in the circuit court and then reversed, because the situation changed the whole complexion of things, and it cost so much money that funds were exhausted and there was nothing more with which to carry on litigation.

Senator DOLLIVER. It seems to me there ought to have been money enough to have gotten some decision out of it.

Mr. ADAMS. There was a decision of the circuit court. The circuit court reversed the decision of the Interstate Commerce Commission.

Senator DOLLIVER. Holding under all the circumstances that the rate was reasonable?

Mr. ADAMS. Holding that under all the circumstances—as I remember the case they did not hold that the rate was reasonable. They held that under the circumstances the law did not justify the decision of the Interstate Commerce Commission.

Senator DOLLIVER. But the Interstate Commerce Commission law is that the rate shall be just and reasonable and that an unreasonable rate is unlawful?

Mr. ADAMS. The question always turns on what is a just or unreasonable rate.

Senator DOLLIVER. How did the court determine that question?

Mr. ADAMS. The decision of the circuit court is not absolutely clear in my mind. I was not in the case and was not consulted. I have read the case, but it was a long time ago, and I should not dare, without consulting the report, to state. But I dare say that Chairman Knapp knows it.

Senator DOLLIVER. I would be glad to know about that.

Mr. KNAPP. Briefly, Senator, as I remember the case it was this: The intrinsic reasonableness of the shorter distance rate to Spokane was not challenged or directly in issue. The complaint was based upon the fourth section, and was brought on the theory that there should be no higher charge to Spokane than to coast city terminals. The defense, of course, was the water competition.

Senator DOLLIVER. How did the Commission decide the question?

Mr. KNAPP. The Commission in that case, Senator Dolliver, found that there was water competition which controlled those rates, but that the disparity was greater than that competition justified, and undertook by its direction in that case to limit that disparity on a basis which will appear on examination of our reports and opinions; and that, by the way, illustrates what Commissioner Prouty said of the efforts which the Commission has made to give some potential application to the fourth section, and even in that modified form the court refused to enforce the order.

Senator DOLLIVER. Now, then, Mr. Adams, has any action ever been brought by your people or the people of Spokane to have the question brought into judgment—whether that rate to Spokane is reasonable in itself or not?

Mr. ADAMS. No, sir. I told you I had never considered——

Senator DOLLIVER. You have two tribunals open for a litigation of that sort?

Mr. ADAMS. We have two tribunals open; I know they are theoretically open. That is our grievance, that we are convinced that it would be practically money thrown away for us to bring in a question of reasonable rate. Now, this is the point, and it is the whole point of my grievance that I want to point out to you: A man may be ruined as completely by a rate of 8 mills, which is a reasonable rate, when his competitor pays 2, as by 8 cents when his competitor pays 2 cents. It is the comparative reasonableness and not the actual reasonableness of a rate which is the grievance, and that is the thing which the Supreme Court has thrown out of consideration, as I understand the decisions. That is what they especially threw out in Calloway's case, which I tried to point out. It is our grievance that we are discriminated against, and can be discriminated against, by a rate which the Supreme Court probably would hold to be intrinsically not unreasonable—that is, not unreasonable in and of itself—but as drastic in its consequences to Spokane as if it were an excessively unreasonable rate.

Senator DOLLIVER. I appreciate that. But suppose the Interstate Commerce Commission had power to fix a rate, have you any reason to anticipate they would give you the same rate, or anywhere near the same rate, as prevails to Seattle?

Mr. ADAMS. I have every reason to suppose it, because they have already given that decision.

Senator DOLLIVER. They cut out part of the discrimination, but did they undertake to remove it all?

Mr. ADAMS. They did not undertake to remove it all; and we did not claim necessarily that we should have it all removed. What we demand is, and the legal principle is obvious, that we want a graduated release. We want the possibility of having the road relieved only to the extent to which it is necessary to have it relieved.

Senator DOLLIVER. How far do you think it ought to be relieved?

Mr. ADAMS. I can not tell you, because——

Senator DOLLIVER. Do you think Spokane ought to have the same rate from Chicago that Seattle has?

Mr. ADAMS. I think so. I think it ought to have the terminal rates. Do you ask me my opinion? Of course I am not a judge.

Senator CULLOM. The Commission does not agree with you fully.

Mr. ADAMS. At the hearing the Commission gave us——

Senator DOLLIVER. What differential did you leave against Spokane in that decision, Mr. Knapp?

Mr. KNAPP. I am unable to say, but my recollection that there appeared in that case two different rates, the class and the commodity rates, the latter being much lower. My recollection is that the class rate to the Pacific coast measured as great a disparity against Spokane as ought to be imposed, and we gave to Spokane on the commodities, which took a very much lower rate at the terminals, the class rates to the coast. Just how much that was in dollars and cents after this long time I can not tell.

Mr. ADAMS. It is not that we claim that the long and short haul clause necessarily should never be suspended.

Senator DOLLIVER. Can you imagine a case where it is more properly suspended where the shipper is confronted by this ocean rate or the carrier is confronted by the ocean rate?

Mr. ADAMS. The Pennsylvania Railroad, for instance, has always found means to observe the long and short haul clause in spite of ocean competition.

Senator DOLLIVER. But the Pennsylvania runs away from the ocean and into the interior.

Mr. ADAMS. So does this run away from the ocean.

Senator DOLLIVER. Is this discrimination the same in going east?

Mr. ADAMS. Not the same. But I detail the great discrimination on lumber here in this document to show what there is going east. Here are lumber schedules elaborately laid out for your inspection, showing rates east as well as west. The discrimination is not so great going east as going west, but it is sufficient to stop the trade of Spokane.

Senator DOLLIVER. I was impressed, when I was up there last fall, with their complaint. It seemed to me to be the most substantial grievance that had been brought to my attention.

Mr. ADAMS. It is as great as can exist in any civilized community.

The CHAIRMAN. How many railroads have you there?

Mr. ADAMS. My impression is that there are eight.

The CHAIRMAN. You have the Northern Pacific, the Great Northern, the Canadian Pacific, and the Oregon Railway and Navigation Company?

Mr. ADAMS. Yes; and I think there is one more.

The CHAIRMAN. I mean trunk lines.

Mr. ADAMS. Those, of course, are main lines. Now, I want to put the case to you.

The CHAIRMAN. Do they all give the same rates?

Mr. ADAMS. Yes; the same rates. Your time is precious, and I do not want to tell stories at this time. I could tell them to you, however.

Senator CLAPP. I want to hear what the condition is.

Mr. ADAMS. I could tell you stories about this thing in Spokane that would take your time for a week.

The CHAIRMAN. Spokane has grown?

Mr. ADAMS. Spokane has grown. But because citizens of the United States are active and intelligent people is no reason why they should bear burdens which their neighbors do not.

The CHAIRMAN. They have not been crushed?

Mr. ADAMS. Are energy and ability any reason for putting a double burden on citizens of the United States? That is new doctrine. I once had that doctrine advanced to me by an official of the Northern Pacific Railway.

Senator KEAN. We people of the East are a good deal discriminated against in favor of the people of the West all the time.

Mr. ADAMS. That is a question which the East has to settle for itself; I am here representing Spokane.

I beg your pardon, you asked me a question, and you said you wanted to hear something, Senator Clapp.

Senator CLAPP. I was calling your attention to the rulings of the court on the long and short haul clause for the purpose of showing how elastic the court has made it. In the Midland case the court held that the mere fact of competition in itself did not relieve the carrier from the prohibition.

Senator CLAPP. It not only has got to be a substantial condition,

but it has got to be a condition affecting the general welfare of the public.

Mr. ADAMS. It has got to be, as I understand, a substantial competition affecting the rates.

Senator CLAPP. I am now taking up the case where they held that the mere fact of competition did not exempt the carrier from the prohibition of the long and short haul clause. It was in the case where they sought to interpose a prospective competition, where the court held that the competition must be an actual competition.

Mr. ADAMS. I think, if you will permit me to make a suggestion, that is the point about which I am speaking. The actual and effective competition operating to suspend the fourth clause came up in the famous case of The East Tennessee, etc., Railway Company *v.* The Interstate Commerce Commission, where Judge Taft was overruled by the Supreme Court; and that was where the question was settled, if I remember right. I have forgotten the volume, but the name of the case is The East Tennessee *v.* The Interstate Commerce Commission. I should say it was somewhere about volume 185, but I forget the number. I have a note of it here.

Senator KEAN. Volume 181.

Senator CLAPP. Now, coming back to the question which I started with, in this Alabama Midland Railway Company Case the court distinctly held that the mere fact of competition did not in itself constitute an exception, or exemption order, to the prohibition of the long and short haul clause. The mere fact of competition, no matter what its character or extent, does not necessarily relieve the carrier from the restraint of the third and fourth sections. Now, that was followed by the case you have just referred to, where they used this language:

> It follows that while the carrier may take into consideration the existence of competition as to the producing cause of dissimilar circumstances and conditions, his right to do so is governed by the following principles:
>
> First. The absolute command of the statute that all rates shall be just and reasonable, and that no undue discrimination be brought about, though, in the nature of things this latter consideration may in many cases be involved in the determination of whether competition was such as created a substantial dissimilarity of condition.
>
> Second. That the competition relied upon be not artificial or merely conjectural, but material and substantial, thereby operating on the question of traffic and rate making, the right in every event to be only enjoyed with due regard for the interests of the public, after giving full weight to the benefit to be conferred on the place from whence the traffic moved, as well as those to be derived by the locality to which it is to be delivered.

In other words, the court held in these cases that the mere fact of competition did not in itself justify the carrier from claiming exemption from the third and fourth sections.

Mr. ADAMS. I think they have gone on steadily drawing up decisions, getting decisions stricter and narrower and narrower on that clause. Of course, when I spoke of it I was not arguing the entire line of decisions; I was speaking of the last decisions.

Senator CLAPP. I am getting at the flexibility of the law instead of the constant claim that the courts have made the third and fourth clauses absolutely inflexible. In these earlier cases, the cases I have just read from, the court held that competition in itself, no matter how real that competition was, no matter what the character of the competition was, the mere fact that the competition itself did not

grant the carrier immunity from the prohibition. Now, in this other case that you referred to in 190.

Mr. ADAMS. That is Calloway's case?

Senator CLAPP. Yes. Speaking of the decision of the Commission and the decision of the circuit court of appeals, it is held to be inferable from the argument, and the court ordered the case to be dismissed without prejudice to further proceedings, because it was of the opinion that in the consideration of this question the Commission had in effect been controlled by the finding held to have been erroneous and that there had been a violation of the third and fourth sections of the act. It was therefore deemed that the controversy, so far as the intrinsic reasonableness of the rates was concerned, should be left for further consideration and decision upon the evidence already introduced, and such additional evidence as might be taken on further hearing before the Commission if such new hearing was determined upon.

Now, dealing with that, which went to the question of the reasonableness, per se, of the rate, and not to the position of the court or the Commission as to the absolute binding effect of competition, the Supreme Court of the United States affirmed that decree of the circuit court of appeals. That is, the Supreme Court did not dispose of the case as to the reasonableness of the rates.

Mr. ADAMS. That is the skillful way in which the Supreme Court decides these cases, of course. We have to look at these cases as practical matters of fact. Of course, the Supreme Court says all sorts of eloquent things about the right of suitors.

Senator CLAPP. Is it to be amended merely as a matter of eloquence when the Supreme Court says the circuit court is affirmed?

Mr. ADAMS. The circuit court reversed the Interstate Commerce Commission. The Supreme Court of the United States said that the Interstate Commerce Commission did not decide on the reasonableness of the rate per se. Of course, if it says so, they did not. But I confess that I imagine from the language used that the Interstate Commerce Commission thought they decided that question when they made their decision.

Senator CLAPP. If we ignore what the Supreme Court said, then there is no use of continuing the argument as to what was said.

Mr. ADAMS. There is not. If my clients come to me and say, "Is there a chance of getting a decision?" and I see the decision of the Interstate Commerce Commission reversed, as was in that case, a decision that was perfectly flat-footed, I say, "Why, no; it is a waste of money." The Supreme Court does not intend really to carry through that principle.

Senator CLAPP. What principle?

Mr. ADAMS. The principle of the long and short haul clause. That is the only inference that I can draw from the decisions, namely, that the Supreme Court is antagonistic to that clause, and my client will waste his money if he goes into that sort of business.

Senator CLAPP. I am discussing your original criticism as to what the courts have decided. They certainly have made that law as effective as it would be possible to do.

Mr. ADAMS. In other words, they have never given any relief; that is all. They have simply thrown every suitor, but one, out who came in.

Senator CLAPP. What would you recommend now as a remedy in view of these decisions?

Mr. ADAMS. The practical remedy seems to be perfectly simple. Simply make the long and short clause binding unless the roads come in and seek relief.

Senator CLAPP. Under what circumstances would you give them relief?

Mr. ADAMS. That should be in the discretion of the court.

Senator CLAPP. In framing the law you say you would make the long and short clause binding unless they came in and got relief? What provision of the law would you have under which the court could get relief?

Mr. ADAMS. The burden should be on them. I would leave it to the discretion of the court. That is what I would do. Make the law binding unless the railroads on petition could show that there was a reason within the discretion of the court for suspending the operation of the clause.

Senator CLAPP. That is binding now, unless there are dissimilar circumstances.

Mr. ADAMS. Of course, that was all fought out in the great case In re Louisville and Nashville, at the very outset of this thing. The whole question came up, and I do not suppose your Honors want me to enter into that long controversy. The roads may disregard the clause.

Senator CLAPP. I am asking you in regard to the present Interstate Commerce law, which starts out with a prohibition against the giving of lesser rates for the long haul than the short haul. That is an absolute prohibition, is it not?

Mr. ADAMS. No, sir; it is not. Under the construction it is not.

Senator CLAPP. You do not get my question. I say that it starts out by prohibiting the charging of more for a lesser haul than a long haul. Now, if it stopped there it would be absolutely prohibition, would it not?

Mr. ADAMS. Yes.

Senator CLAPP. Now, what follows is the exemption which is worded this way: "Unless the circumstances be dissimilar." Does not that leave it to the discretion of the court? Or, what words would you substitute to give the court discretion?

Mr. ADAMS. I should have to go, you know, into this long question, which was fought out when the Interstate Commerce Commission was established, in the case In re Louisville and Nashville.

Senator CLAPP. Oh, no; you would simply have to take the Interstate Commerce Commission law, and suggest what other language you would put in.

Mr. ADAMS. I could draft a clause which would answer for my purpose perfectly, by using the language of the present clause, until you got down to the words "under substantially similar circumstances and conditions." These words I would strike out. That would leave the prohibition absolute, save for the provision which exists at the end. This also I would strike out, and enact as follows: "*Provided*, That upon petition filed and cause shown by any carrier, the Commission (or court) may so far relieve the said carrier from

the operation of this clause as, in their discretion, the public welfare may demand."

Senator CLAPP. You think that would very materially differ from the present?

Mr. ADAMS. It would materially differ in this respect, that now the carrier, wherever there is competition, acts on his own responsibility and disregards the clause. That is the way in which the thing is worked out.

Senator NEWLANDS. You would put on the carrier the burden of proving to the Commission it is entitled to exemption?

Mr. ADAMS. Precisely.

Senator CLAPP. Do you not think that under the law now the putting of the prohibition first and the exemption afterwards, as a logical sequence, puts upon the person seeking the benefit of the relief the establishment of the condition under which it is enjoyed?

Mr. ADAMS. It is not for me to criticise a decision of the court. I can only take the decisions of the court, and they have held that the carrier at his peril may disregard the clause. Of course the peril amounts to nothing.

Senator CLAPP. He does it now at his peril?

Mr. ADAMS. That is what they call it, his peril; but the peril is nothing.

Senator CLAPP. But there is the burden on him.

Mr. ADAMS. There is no burden on him. The burden is on the petitioner. All these cases occurred either where there was competition actually existing or where there had been competition in the past. Now, the most curious case of all, of course, is the great Chattanooga and Nashville case, the interest of which I do not think can be overestimated, and when the decision of the circuit court in that cause was overruled, that knocked in the head the whole thing.

Senator CLAPP. That is all, unless you have something, Mr. Adams.

Mr. ADAMS. I am ashamed to take up so much time. Now, what I have got to say comes down to this: As we understand this question, railroad rates are taxes. In Spokane every loaf of bread and every glass of water pays, directly or indirectly, the transportation tax. The Government might levy this tax by equal assessment, and own and operate the roads, and even give transportation free, I suppose. It prefers to farm the right to collect this tax to private persons, who are under no effective control and who are under great temptations to abuse their trust. In fact, they do levy this tax as suits their convenience, and they can and do confiscate private property almost at pleasure. I give examples of what they have done at Spokane. That power should be curbed. We need a board for the equalization of taxation—for the protection of the weak.

Senator DOLLIVER. Why do you speak of the transportation tax in any other sense than you would speak of a clothing tax?

Mr. ADAMS. I speak of it because it takes the place of the highway tax. The railway is the highway, and the State, of course, could build a railway, or build a canal, out of public money and adjust it exactly as it pleased. It could give you free transportation and pay all by taxation.

Senator DOLLIVER. I noticed that in a magazine article some time ago you introduced that phrase as a title to the article, and it has been suggested to us here by a good many people that the phrase is rather

inclined to disparage extra railway charges as compared with other expense.

Mr. ADAMS. Not in the least. It would be far from my wish to disparage railways in any way. The immense importance of the railways is the last thing I should gainsay. It is on account of its excessive importance that the levying of the railway rate or transportation tax is a sovereign right. It is the highest function of government to provide means for transportation. There is no function of government so high and so important, except the function of the administration of justice. Now, that great function can be either farmed out to individuals, as it is farmed to a turnpike, for instance, or to a canal, or it can be executed by the Government itself, as has been done in the case of a highway, or in a case of a bridge, or in a case, we will say, of a national railroad such as the nationalized railways of Germany. It is a State function, and if a State chooses to farm out the power of taxation to private individuals, it does nothing more than to farm out the right of eminent domain.

Senator DOLLIVER. In Germany, where the roads are owned by the Government, the testimony here would seem to indicate that the Government makes no effort at all to compete with these water lines, that the Government will have a railway, and build a canal right alongside of it.

Mr. ADAMS. The Government will do precisely what it judges best. That is the business of each government to settle according to its own judgment.

Senator DOLLIVER. Are there not a number of good towns in the neighborhood of Spokane?

Mr. ADAMS. Very few—that is, to compete with Spokane.

Senator DOLLIVER. I noticed some very popular towns out there. I remember one named Yakima. Are they complaining of Spokane railroad rates very much as you are complaining of Seattle?

Mr. ADAMS. I am not aware that they are, but I think it highly probable that they are. If they are, of course the injustice to them is of the same nature as it is in regard to Spokane and Seattle.

Senator DOLLIVER. Spokane has several railroads and many of these other towns appear to have only one?

Mr. ADAMS. I have no doubt they suffer. The weak always suffer. The weaker you are the more you suffer. That is what we are asking protection for. It is that for which we come to the Government. We ask protection because we are weak. That is my case. The railroad says, "We tax you because you are weak—because you are weak and can't defend yourself. We do not overtax Chicago, because Chicago is strong." You go to a railroad manager and what is his answer? His answer is, "What are you going to do about it?"

Senator DOLLIVER. I have heard that answer attributed to railroad managers and other people many years ago, but testimony here seems to show that the railroads are interested in building up business facilities along their lines, and will do what can be reasonably done to promote the prosperity of their patrons through the territory in which they operate.

Mr. ADAMS. Sir, do you remember the case of Savannah? The testimony was that the Louisville and Nashville Railroad—and if I quote it wrongly, Mr. Prouty, set me right—maintained that the rail-

road was a private enterprise, whose business it was to do the best it could for itself, and in carrying out that policy it proposed to shut out the commerce of its territory from Savannah and send it down to Pensacola, where it had an interest.

Senator DOLLIVER. I do not catch the exact force of what you say.

Mr. ADAMS. The Louisville and Nashville Railroad undertook by prohibitive rates to prevent anybody from sending any of the produce of its own territory to Savannah. They diverted it all to Pensacola, where they had an interest.

Senator KEAN. Did they have a railroad to Savannah?

Mr. ADAMS. No; the Louisville and Nashville did not, and that is just the point.

Senator KEAN. How could they control when they did not have a railroad?

Mr. ADAMS. They simply put on prohibitive rates on their own road.

Senator NEWLANDS. And prevented produce from going to Savannah?

Mr. ADAMS. Yes. It is very simple.

Senator KEAN. They made the rates over their own road?

Mr. ADAMS. They made the rates prohibitive on everything going East on their own road.

Senator DOLLIVER. Why did they do that?

Mr. ADAMS. Because they wanted to send it on to Pensacola.

Senator DOLLIVER. Why?

Mr. ADAMS. Because they had an investment down there. They had property in Pensacola which they wanted to improve. At least that was the evidence in the case. Now, this question is a question where the railroads have got to collect the interest on their property, and they will collect where it is easiest to collect it. They have collected from the weakest. They won't collect too much from Rockefeller. They will collect the deficit from the little men, because the little men can not resist. They won't collect it from Chicago, as somebody was testifying here. I think Senator Foraker said with great justice that Chicago has always 5 cents the better. It is always on the weak that the burden rests, and it is because we are weak, because I represent the weak, that we come to the Senate of the United States and say that it is the business of the United States to protect us.

Senator DOLLIVER. Now, tell us exactly what you want us to do.

Mr. ADAMS. We want you to give us a tribunal which will immediately, by injunction, we will say, or by some immediate process, give relief where there is danger of specific and irreparable injury, as in these cases I have related in Spokane. We want also a tribunal which can consider and condemn as unjust a whole schedule of rates, where it bears too heavily upon a town, in comparison with neighboring and competitive towns. And it is not enough that it should condemn. It must be empowered to command the offending road, under a sufficient penalty and within a certain time, to bring in an amended schedule which shall commend itself as just to the discretion of the court. Less than this is futile. Giving relief in one rate is nothing. Take the whole schedule of rates which is imposed on Spokane. Our contention is that they wrest an unreasonable amount of money from Spokane. We want a tribunal which will deal with those rates as a whole.

Senator DOLLIVER. Now, in your magazine article you suggested, I believe, that there ought to be a judicial tribunal to dispose of such matters as that.

Mr. ADAMS. I think, sir, it is the wisdom of the United States Senate to provide that tribunal.

Senator DOLLIVER. I am talking about the wisdom you had the kindness to suggest in a magazine article.

Mr. ADAMS. It is a simple matter which I suggest. It is the Senate of the United States which is responsible here.

Senator DOLLIVER. Well, we read your writings with great respect and consideration, and I was struck by the fact that you seem to despair of any other tribunal except a special court of some kind.

Mr. ADAMS. I entirely agree with Mr. Prouty that there should be a special court of some kind. Whether it should be a court or commission is perhaps immaterial. I think Mr. Prouty underestimated the number of men that he needed in the court.

I think the country would need several men sitting locally, like judges in equity, who could give summary relief. In these cases you often need immediate process. They can not run on for months and years without ruining the sufferer, as the Spokane companies have been ruined, whose story is told in the documents annexed. That is merely my judgment, of course. Whether you call him a commissioner or whether you call him a judge is a matter which the United States has to deal with.

Senator KEAN. Does that complete your statement?

Mr. ADAMS. I have only to say in conclusion that this is a question which we conceive goes to the very foundation of free institutions. If you are not going to protect us, but practically hand us over to the railways to levy what taxation they please on us, I will say that there is no condition so intolerable as taxation by irresponsible persons. You have to deal with, also, the question of watered stock. That is a problem which comes into this reasonable-rate business. In Calloway's case there was water to the extent of 100 per cent of stock.

Now, I have only finally to say, Mr. Chairman, that this question, in our judgment, is one in which we are asking for protection as a right. If the railroads are prepared to take the Government of this country and run it, they must be the Government. If they have the power of uncontrolled taxation, they had better take it absolutely, freely, and be responsible. Make the railway wholly responsible for every act. If you are going to protect the weak, then give us an effective statute. If not, repeal all your laws and make the roads responsible to public opinion alone.

SPOKANE CHAMBER OF COMMERCE,
May 11, 1905.

It is significant that Spokane, the natural distributing center of a territory having a population of 300,000 people; with transportation facilities unequaled west of St. Paul, the Missouri River, and Denver; with a population of its own of nearly 75,000, has no manufacturing of any magnitude. The total value of all manufactured products will not exceed $9,000,000 annually. This condition can not altogether be attributed to lack of population, newness, and the speculative spirit, but is traceable directly to discrimination in freight rates. This one factor has done and is still doing more than all

others combined to retard the industrial development of this country. That this is true I but cite you to two instances occurring here at the present time, namely, the suspension of the Pacific Coast Pipe Company's works and the factory of the Spokane Paper Box Company, both of which were compelled to go out of business because of freight-rate discrimination.

The Pacific Coast Pipe Company started to manufacture wired wooden pipe in the spring of 1900. The company owns patents on the machinery it uses and started with four hands. There was at that time but one factory of this kind on the North Pacific coast, located at Seattle. The rate on manufactured pipe from Seattle to Spokane was 46 cents per 100 pounds C. L. plus the local rate from Spokane to all points east. This rate was entirely satisfactory and enabled the Spokane factory within a little over three years after beginning operations to increase its plant to 50 hands, with an investment of $50,000. The Seattle factory, backed by the big lumber firms on the coast, finding a serious competitor in the Spokane field, got the railroads to put manufactured pipe under the lumber classification, thus reducing the rate from Seattle to Spokane from 46 cents to 20 cents per 100 pounds.

The Spokane factory, besides paying a rate of 50 cents more per 100 pounds for their wire than the coast, had, of course, to pay 20 cents per 100 pounds for their raw material—the lumber—which came from the coast. Considering the further fact that 33⅓ per cent of the lumber was lost in manufacture, the coast manufacturers were able to lay down the manufactured pipe in Spokane about 60 per cent cheaper than the local factory could manufacture it. This rate went into effect September 15, 1903, and was not discovered by the local factory until two months later, when the Spokane factory came in competition with the Seattle factory for a contract for wood pipe at Butte, Mont. The bid of the Seattle firm was less than the pipe could be sold for at Spokane, and Butte is 384 miles east. The Spokane factory after learning of the rate situation saw at once that it would be a matter of a short time when it would be forced out of business, and at once filed a vigorous protest, with the result that the railroads put back the rate from Seattle to Spokane to 46 cents, but established a maximum rate of 50 cents for Seattle pipe, which, of course, shut off all territory east of Spokane from the Spokane factory. It was three months before even this rate adjustment could be effected, which would have been sufficient time to have forced any ordinary institution to the wall. The Spokane factory, however, having ample capital, simply continued the factory here at a loss, but at once purchased a site and rushed machinery for a factory at Ballard, a suburb of Seattle. The factory here, which had been increased to 50 hands, was reduced to 1 machine and 8 hands, and the other machinery removed to Ballard. The remnant of the Spokane factory, after struggling along for the past eight months, has been compelled to shut down, and the entire plant is being removed to Ballard. Before the branch factory was started at Ballard the local concern was shipping nearly two carloads of pipe daily, besides what they manufactured for local consumption, and were giving employment to 50 families.

Prior to the cut in rates in favor of the coast the Spokane factory had as territory all of eastern Washington, Idaho, and Montana, and,

as stated above, was shipping pipe at the rate of two carloads per day. The loss of the factory here means the loss of 50 families and a pay roll of about $3,000 per month. It is needless to say that water competition did not enter into this rate discrimination, as no wood pipe is shipped via ocean to interior points. You must understand that while the railroads under the protest of the local factory put back the rate to 46 cents from Seattle to Spokane, refused and are still refusing to adjust the rate to points east of Spokane; hence wood pipe manufactured on the coast takes the lumber rate in all territory east of Spokane, thus making it impossible for a Spokane factory to compete in this territory. Considering the increased cost of manufacture at Spokane and the fact that there is not sufficient business to maintain a factory without outside territory, the Spokane factory had to be abandoned.

The Spokane Paper Box Company started in the manufacturing business here three years ago. It employed 8 hands, but was recently forced out of business because of rate discrimination almost similar to that of the Pacific Coast Pipe Company. This factory, however, manufactured candy boxes and small druggist goods. The folder boxes used by the cracker factories and cereal factories, which comprise the largest portion of the local trade, are shipped from eastern factories to Spokane. The differential on strawboard and knocked-down boxes from Indiana common points to Spokane is but 10 cents per 100 pounds, and when you consider that there is 33⅓ per cent waste in manufactured goods, eastern factories are enabled to lay down the manufactured article in Spokane cheaper than the local factories can lay down the strawboard. It is estimated that there is a market here for a factory that would employ from 25 to 50 hands. There is no paper-box factory between St. Paul and the coast; hence Spokane on account of railroad facilities should be the best manufacturing point in the West.

In the manufacture of sash the pine and cedar lumber of eastern Washington is much superior to the coast fir, yet, while there are 5 factories engaged in the manufacture of sash in Spokane, they manufacture only for local trade, and there are two concerns in the city which compete with the local factories and buy their sash from coast factories. The rate on window glass from Pittsburg to Spokane is $1.38½ per 100 pounds. The rate to Portland, Seattle, and other coast points is 90 cents, thus enabling the coast manufacturers to furnish the finished product for the price of glass to the Spokane manufacturer. The William Musser Lumber and Manufacturing Company, which started in business here in 1902, would have invested $75,000 in a sash factory and employed 50 hands if it would have been possible to get a 90-cent rate on glass. The railroads also allow the coast manufacturers to ship sash in mixed carloads with lumber, which takes the lumber rate, hence enabling them to lay down manufactured sash in Spokane for $1.10 freight charges against $1.38½, the rate charged for glass to Spokane manufacturers. Every sash factory in Spokane would be forced out of business if it were not for the steady local market demanding special sizes, which are included in the regular millwork for new buildings. The wonderful building activity of Spokane in the past five years made it possible for the mills to manufacture sash. As it is, the coast manufacturers supply the local market for nearly all sash in regular sizes.

The following is a schedule of rates on articles used in the iron industry:

Article.	From—	Per 100 pounds.	
		To Spokane.	To coast.
Steel plate	Pittsburg district	$1.23	$0.75
Sheets	do	1.28	.80
Angles, beams (channels, bars)	do	1.23	.75
Shafting	do	1.23	.75
Belts, nuts, washers, etc	do	1.28	.80
Mining-car wheels	Chicago district	1.26	.85
Link belting	do	1.23	.85
Pig iron	Alabama	[a] 13.00	[a] 13.00
Mining machinery	New York	1.68	1.40
The above are carload shipments.			
Belting (L. C. L.)	Chicago	3.13	1.65
Bar iron (L. C. L.)	do	2.07	1.25

[a] Per ton.

As an example of how the 100-mile territory is being maintained to Spokane in the iron industry, take Wallace, Idaho, a distance of 102 miles and almost directly east from Spokane: Bar iron, Pittsburg to Spokane, carloads, $1.23; local, Spokane to Wallace, 45 cents, making a total of $1.68 per 100 pounds to Wallace if handled through Spokane. Bar iron, Pittsburg to Portland, 75 cents; local, Portland to Wallace, 82 cents; total rate per 100 pounds, $1.57, if shipped to Wallace via Portland, making a haul of 350 miles farther than if shipped via Spokane. Thus you will see that the coast to a point just 2 miles outside the 100-mile limit from Spokane has a rate 11 cents better than Spokane on this commodity. Again, the railroads charge a local rate of 45 cents for 100 pounds, Spokane to Wallace, 102 miles, as against 82 cents, Portland to Wallace, a distance of 452 miles. Again, mining machinery can be laid down in Spokane from Chicago at $1.40 per 100 pounds, while nearly all raw material used in the manufacture of mining machinery from the Pittsburg district to Spokane costs from $1.23 to $1.33 per 100 pounds. This is but one of the numerous instances we can cite, but will serve for the purpose.

Up until a little over a year ago the freight rate on pig iron from Alabama to Spokane was $21.90 per ton, or $6.80 per ton more than the coast rate from the same point. The only way local manufacturers were able to force a reduction of the rate was to buy the pig iron in a foreign market, have it shipped as ballast to Portland and thence by rail to Spokane. By this arrangement they were enabled to get their pig iron laid down in Spokane at a cost of $27.80 per ton, against $30.80 per ton if shipped from Alabama. The railroads, seeing that a reduction would have to be made to meet the so-called "water competition," secretly made a rate of $13 per ton, the coast rate, which rate was later published. Now, then, the rates from the coast to Spokane, known as the "pull back rates," are as follows: First class, $1.48; second class, $1.33; third class, $1.02; fourth class, 82 cents. These are the rates above the coast rates that have to be paid by all merchants in Spokane who ship in less than carload lots. The fifth class, or carload rates, from the coast to Spokane, range from 50 to 70 cents per 100 pounds and enter largely into the makeup of the so-called "commodity rates" for Spokane—that is, the coast rates plus the fifth class or carload rates from the coast to Spokane constitute the Spokane commodity rates.

The concession recently made at Chicago, giving to Spokane a distributing territory within a 100-mile radius, has helped a few lines, but, in the main, business men say that it is of no considerable benefit.

Hoping that these facts may be of service to you, we remain,

Very truly, yours,

L. G. MONROE, *Secretary.*

WESTERN PINE SHIPPERS' ASSOCIATION,
Spokane, Wash., December 30, 1904.

Mr. W. H. ACUFF,
Chairman Legislative Committee, Spokane, Wash.

DEAR SIR: As you are about to proceed to Washington, D. C., in behalf of the members of our association, as well as to represent other commercial organizations, for the purpose of securing interstate-commerce legislation, to regulate discriminations against localities, we desire to call your attention to some of the discriminations in the way of unjust freight rates against the "inland empire" and Spokane territory.

The rate on lumber from Portland, Oreg., to Lewiston, Idaho, via the Northern Pacific Railway is 20 cents and involves a haul of 687 miles.

The rate on lumber from Lewiston, Idaho, to Portland, Oreg., via the same route is 26 cents, the same length of haul.

The rate on lumber from Portland, Oreg., Seattle, Wash., and kindred territory to Spokane, Wash., is 20 cents via the Northern lines.

The rate on lumber from Spokane, Wash., and kindred territory to Portland, Oreg., Seattle, Wash., and like territory is 26 cents via the Northern lines.

The rate on lumber from Portland, Oreg., via the Northern Pacific, to St. Paul, Minneapolis, and Duluth, Minn., is 40 cents.

The rate on lumber from Spokane and kindred territory, to the same points, is 40 cents, although the haul is in no case less than 540 miles shorter and in some cases 625 miles, via the same line.

The rate on lumber via the Great Northern from Seattle and kindred territory to St. Paul, Minneapolis, and Duluth, Minn., is 40 cents.

The rate on lumber from Spokane and kindred territory via the Great Northern, to St. Paul, Minneapolis, and Duluth is 40 cents, although the haul is on an average of 400 miles shorter.

The distance from Spokane to Lewiston, Idaho, is 147 miles, and the rate on lumber is 13 cents.

As before stated, the distance from Portland, Oreg., to Lewiston, Idaho, is 687 miles, and the rate on lumber is 20 cents; the distance from Spokane, to Lewiston, Idaho, over the same road (the Northern Pacific) is 147 miles and the rate is 13 cents. Compare basis of charges.

The greatest distance lumber is hauled east from Portland, Oreg., on a 20 cent rate is not less than 687 miles.

The greatest distance lumber is hauled east over the Northern Pacific from Spokane on a 21-cent rate is 385 miles and this rate is made by various combinations which do not include all articles manufactured from lumber included in the regular classification.

The greatest distance lumber is hauled east from Seattle via the Great Northern is 348 miles on a 20-cent rate.

The greatest distance lumber is hauled east from Spokane via the Great Northern on a 20-cent rate is 216 miles.

The greatest distance from Spokane, Wash., to North Dakota is 878 miles. Using the mileage basis of charges used from Portland via the Northern Pacific (which illustrates what lumber can be hauled for), our rate should not exceed 25 cents.

The rate on glass used in manufacturing windows and glass doors from Munsey, Ind., to coast points is 99 cents.

The rate on glass used for the same purpose, to Spokane, is $1.38 from the same point, although the distance is from 400 to 500 miles less.

These are a few of the flagrant discriminations; there are many others, but trust that these will suffice for illustrations. We are,

Very truly, yours,

WESTERN PINE SHIPPERS' ASSOCIATION.
By R. A. KELLOGG, *Secretary*.

Commodity rates.

Article.	From—	Spokane.	Coast.
Agricultural implements	Chicago	$1.66	$1.25
Do	Missouri River points	1.45	1.15
Do	New York and Boston	1.75	1 25
Corrugated paper	Chicago	1.78	.85
Baking powder	....do	1.64	1 10
Bath tubs, sheet steel	....do	3.25	2.40
Bath tubs, cast iron	....do	2.10	1.40
Belting	All points	1.95	1.10
Bicycles	Chicago	3.70	2.50
Books, blank, etc	...do	1 79	1 25
Books, n. o. s., scrap, etc	....do	2.25	1 40
Boots and shoes	....do	2.90	a 2.35 a 2.00
Boxes, paper	...do	1.44	90
Canned corn	New York and Ohio	1.43	95
Do	Chicago and St. Louis	1 30	.90
Do	Missouri River points	1 25	85
Canned goods	Chicago	1 35	95
Carpets	do	2.60	1.75
Carpet lining	....do	1.85	1 00
Coffee	...do	1 38	90
Clothing	...do	2.35	1 50
Crockery	...do	1 49	95
Dry goods, calicoes, etc	....do	1 85	1.00
Cottons, duck and denims	...do	1 75	90
Earthenware	...do	2.18	1.40
Beef extract	....do	2.25	1 40
Incandescent lamps	....do	3.70	2.00
Mattresses, etc	....do	1 79	1.10
Window glass, common	....do	1.38	.90
Window glass	....do	1.60	90
Plate glass	...do	2.35	1.60
Glassware	..do	1.80	1 10
Saddlery hardware	...do	2.20	a 1.75
Ink	...do	1.81	1 00
Insulators	..do	1.60	75
Structural iron	....do	1.23	.75
Bar iron	....do	1.10	75
Bridge iron	....do	1.28	.75
Plain castings	...do	1.45	.75
Fire escapes	....do	1.70	1.25
Iron pipe	....do	1.00	50
Corrugated pipe	....do	1 78	1.00
Steel safes	...do	2.41	1.75
Lamps, not electric	....do	1.95	1.10
Lamps, glass	....do	2.35	1.10

a L. C. L.

Commodity rates—Continued.

Article.	From—	Spokane.	Coast.
Lawn mowers	Chicago	$2.10	$1.25
Linseed oil	do	1.64	1.10
Picture moldings	do	1.85	1.00
Nails and wire	do	1.10	.65
Horseshoe nails	do	1.39	.85
Nuts, easable	do	2.31	1.30
Paints, mixed	do	1.21	.90
White lead	do	1.21	.80
Paper, building, etc	do	1.19	.75
Do	New York	1.29	.75
Paper bags	Chicago	1.40	1.00
Wrapping paper	do	1.80	1.20
Do	New York	2.00	1.20
Pumps	Chicago	1.95	1.40
Rubber boots and shoes	do	2.20	1.35
Rubber clothing	do	2.45	1.60
Rubber tires	do	1.95	1.10
Rubber tubing	do	2.05	1.20
Seeds	do	1.70	1.20
Sewing machines	do	2.25	1.40
Soap, toilet	do	1.23	.75
Soap (net cost 10 cents per pound)	do	1.35	1.00
Soda ash, etc	do	1.00	.50
Spices	do	2.03	1.25
Granite ware	do	1.80	1.10
Gas stoves	do	3.77	2.50
Cast-iron stoves, cooking, etc	do	1.70	1.25
Furnaces	do	1.91	1.40
Toys, children's	do	2.20	1.35
Tobacco	do	2.91	1.50
Trunks and valises	do	3.05	2.20
Twine, for harvesters	do	1.44	.90
Wagons	do	1.65	1.25
Wire and wire goods	do	2.35	1.50
Window-curtain poles	do	1.76	.90
Washing machines	do	2.10	1.40
Do	New York	2.55	1.40
Refrigerators	Chicago	2.20	1.35
Typewriters	do	5.96	3.00

OFFICE OF SPOKANE JOBBERS' ASSOCIATION,
Spokane, Wash., May 16, 1905.

Hon. S. B. ELKINS,
Chairman Senate Interstate Commerce Committee.

DEAR SIR: I herewith transmit to you several schedules furnished to me by some of our members, showing the difference in rates from eastern points to Spokane and coast points.

You will note that in all cases the Spokane rate is greatly in excess of the coast rate—this despite the fact that the haul is about 400 miles shorter. L. C. L. rates to Spokane are made up by using the tariff rate to coast points, plus local rate back. For instance, rate to coast on cotton piece goods, New York to Portland, is $1.50 per hundredweight; Spokane rate is $1.50 plus $1.48, or $2.98 per hundredweight.

I also transmit with these schedules copies of letters received by me from the parties who make up the schedules, showing argument advanced by them. Spokane shippers recognize, to a certain extent, water competition as a determining factor, but contend that existing rates are unjustly discriminative.

Trusting that the inclosed schedules may be of assistance to your committee, we are,

Very truly, yours,

SPOKANE JOBBERS' ASSOCIATION,
By J. M. COMSTOCK, *President.*
J. B. CAMPBELL, *Secretary.*

GRIFFITH HEATING AND PLUMBING SUPPLY COMPANY,
Spokane, Wash., May 23, 1905.

COMPARISON OF RATES BETWEEN PORTLAND AND SPOKANE.

For comparison we show below the commodity rates on various articles in our line to both Spokane and Portland, showing the difference on carload rates between the two cities:

Article.	Carload commodity rate to—	
	Portland.	Spokane.
Earthenware	$1.40	$2.18
Tanks and seats	1.40	2.18
Lavatories	1.40	2.18
Bath tubs, cast iron	1.40	2.22
Sinks	1.25	1.79
Range boilers	1.35	2.10
Wrought-iron pipe	.65	1.11
Cast-iron pipe	.65	1.09
Brass goods (L. C. L.)	1.75	3.08

Yours, respectfully,

GRIFFITH HEATING AND PLUMBING SUPPLY CO.
J. H. GRIFFITH.

SPOKANE, WASH., *May 23, 1905.*

J. B. CAMPBELL,
Secretary Spokane Jobbers' Association, Spokane, Wash.

DEAR SIR: We herewith inclose copies of a table showing the comparative freight rates upon dry goods to Spokane from eastern points, and from the coast to Spokane in car lots and less than car lot rates.

You will note in most cases the Spokane rate is greatly in excess of the coast rate—this despite the fact that the haul is some 350 miles shorter. We recognize water competition as a determining factor, but contend that existing rates are unjustly discriminative.

Very truly, yours,

SPOKANE DRY GOODS CO.
Per J. M. COMSTOCK.

Table showing comparative freight rates from eastern points on dry goods to Spokane and coast points in carload and less than carload lots.

Commodity.	Carload rate to the coast.	Carload rate to Spokane.	Differential in favor of the coast.	Less than carload to coast.	Less than carload to Spokane.	Differential in favor of coast.
Underwear and hosiery	$1.50	$2.35	$0.85	$2.00	$3.48	$1.48
Cotton piece goods	1.00	1.85	.85	1.50	2.98	1.48
Cotton duck, denims, drills, and sheetings	.90	1.75	.85	1.35	2.83	1.48
Oilskin clothing	1.60	2.45	.85	2.20	3.68	1.48
Cotton yarn carpet warp	.90	1.75	.85	1.50	2.98	1.48
Table oilcloth	1.00	1.78	.78	1.50	2.83	1.33
Linoleum	1.00	1.72½	.72½	1.50	2.83	1.33
Window-shade cloth	1.00	1.85	.85	1.50	2.98	1.48
Window-shade rollers and fixtures	1.10	1.76	.66	1.60	3.08	1.48
Carpets	1.50	2.35	.85	2.50	3.98	1.48
Bags and bagging, gunny, hemp, or jute	.85	1.48	.63	1.25	2.20	.95
Trunks and valises	2.20	3.05	.85	3.00	4.48	1.48

NOTE.—All of above rates are blanket rates or "postage-stamp rates," that is they are the same whether shipments originate on Atlantic seaboard or Chicago and common points.

THE A. A. KRAFT COMPANY,
Spokane, Wash., May 13, 1905.

J. B. CAMPBELL,
Secretary Jobbers Association, City.

DEAR SIR: In reference to freight rates our and kindred lines are no better off than others in the city as the rates from East here are made, as you know, by adding the local rate from coast here to rate from East to coast, and below we give you a few items which are self-explanatory, showing in some instances rate into Spokane is almost double the rate to coast from same points, all less than carload rates except where mentioned.

	Rates from any point East to Spokane.	To coast terminals.
Horse blankets and plush lap robes	$3.88	$2.40
Horse brushes	3.08	1.75
Sweat pads in carloads of 20 M	2.08	1.25
Wooden hames	2.17	1.35
Copper rivets	3.08	1.75
Leather, harness and skirting	2.48	1.15
Leather, other kinds	2.98	1.50
Saddletrees	3.13	1.65
Saddlery hardware	3.08	1.75
Harness soap	2.48	1.00

On saddlery hardware we have a carload rate with a minimum of 24,000 pounds of $2.35 per hundredweight, applicable only as far east as Cleveland, whilst coast cities can ship lots of 100 pounds only for $1.75 per hundredweight and applicable to any point as far east as Atlantic coast.

Again, rate on harness leather from San Francisco, Cal. (where bulk of harness leather is obtained), to New York and intermediate points is $1.15 per hundredweight, whilst we pay to Spokane $1.30

per hundredweight, a difference in haul of thousands of miles. Rate on other leathers from San Francisco to New York and intermediate points is $1.50, to Spokane $1.73.

To sum up you might say the rates to Spokane in our and kindred lines are not less than from 60 per cent to over double the rates to coast.

We trust the above figures will be of benefit to you in presenting the Spokane case.

Yours, truly,

THE A. A. KRAFT CO.
A. A. K.

BOOTHE-MCCLINTOCK COMPANY,
Spokane, Wash., May 15, 1905.

J. B. CAMPBELL,
Secretary Spokane Jobbers' Association, Spokane, Wash.

DEAR SIR: Inclosed you will find a list of a number of articles in the grocery line, which we handle, on which we are greatly discriminated against.

In explanation of the inclosed rates from the different points to the coast and to Spokane will say that the letters L. C. stand for carload, L. C. L. for less than carload, and the difference is the discrimination or higher rate that Spokane pays on the articles from the East over what the coast pays, and the goods to the coast are hauled from 300 to 350 miles farther than if left at Spokane and often are hauled through Spokane. The letters P. S. R. mean postage-stamp rate, or a rate that is good from all points to the coast or to Spokane, as it may be used. On east-bound freight the difference is the amount that the East pays higher than Spokane. To reach Spokane goods are hauled about 350 miles, against anywhere from 1,500 to 3,000 miles, for the difference in the two rates. On salt fish shipped in barrels from the coast to Spokane the rate is 75 cents per hundredweight, and shipping to St. Paul, Chicago, or any other point in the East the rate is the same. You will note that while Spokane is only about 350 miles from the coast, it takes the same rate on salt fish as any point east of here regardless of distance.

In the last few days the railroads have announced their intention of getting out a new list, which takes all of our commodities from us from the East and advances our rate on canned fish from the coast from 55 to 65 cents per hundredweight, on bluestone from 40 to 65 cents. These advances are to take effect the 1st of June. All of our commodity rates have been taken from us, or at least will be on that date, which practically puts us out of business on western goods, and as they compromise from half to three-quarters of our business it is quite a hardship on us.

Yours, truly,

BOOTHE-MCCLINTOCK CO.,
Per L. F. BOOTHE, *President.*

Articles.		Norfolk, Va., to coast.	Norfolk, Va., to Spokane.	Difference or discrimination against Spokane.
Peanuts	C. L.	$1.30	$1.69	$0.39

Articles.		Rome, N. Y., to coast.	Rome, N. Y., to Spokane.	Difference or discrimination against Spokane.
Canned corn	C. L.	$0.90	$1.43	$0.53
Mixed canned goods	do	1.00	1.48	.48

Articles.		New York to coast.	New York to Spokane.	Difference or discrimination against Spokane.
Gelatin	L. C. L.	$1.75	$3.23	$1.48
Dried currants	C. L.	[a]1.20	[a]1.74	.54
Nutmegs	do	1.25	2.03	.78
Spices	do	1.25	2.03	.78
Starch	do	[a]1.00	1.54	.54
Cocoanut	L. C. L.	1.50	2.83	1.33
Cocoanut	C. L.	1.25	2.03	.78

Articles.		Iowa points to coast.	Iowa points to Spokane.	Difference or discrimination against Spokane.
Canned corn	C. L.	$0.90	$1.30	$0.40

Articles.		Duluth to coast.	Duluth to Spokane.	Difference or discrimination against Spokane.
Salt	C. L.	$0.60	$0.85	$0.25

EAST-BOUND FREIGHT.

Articles.		Coast to all points east of Missouri River.	Coast points to Spokane.	Difference.
Canned fish	C. L.	$0.75	$0.55	$0.20
Salt or pickled fish, in kits or barrels	do	.75	.75	.....
Dried fruit, in boxes	do	1.00	.75	.25
Sugar, in sacks or boxes	do	.....	.65	.....

[a] P. S. R.

The following are some of the rates that the Spokane merchants are paying for the necessaries of life and comparison with what the coast and other points pay for the same articles:

Articles.		St. Paul to coast.	St. Paul to Spokane.	Difference or discrimination against Spokane.
Canned corn	C. L.	$0.90	$1.25	$0.35
Pickled fish	do	1.20	1.50	.30
Candy	L. C. L.	2.20	2.60	.40
Chocolate	do	1.75	2.60	.85
Spices	do	1.25	1.94	.69

Articles.		Chicago to coast.	Chicago to Spokane.	Difference or discrimination against Spokane.
Candy	L. C. L.	$2.20	$3.00	$0.80
Cocoa and chocolate	C. L.	1.25	2.03	.78
Coffee	do	.90	1.38	.48
Crackers	do	1.65	2.20	.55
Lye	do	a.75	a1.23	.48
Pickles	do	a1.00	a1.51	.51
Paper bags	do	a1.00	1.40	.40
Paper rolls	do	a.75	1.19	.44
Soap	do	a.75	1.20	.45

Articles.		Philadelphia to coast.	Philadelphia to Spokane.	Difference or discrimination against Spokane.
Pickled fish	C. L.	$1.20	$1.71	$0.51

Articles.		Alexandria to coast.	Alexandria to Spokane.	Difference or discrimination against Spokane.
Lamp flues	C. L.	$1.40	$2.08	$0.68

Articles.		St. Louis to coast.	St. Louis to Spokane.	Difference or discrimination against Spokane.
Wooden ware	C. L.	$1.35	$1.84	$0.49

Articles.		New Orleans, Lake Charles, Mississippi and Missouri River points to coast.	New Orleans, Lake Charles, Mississippi and Missouri River points to Spokane.	Difference or discrimination against Spokane.
Rice	C. L.	$0.55	$1.03	$0.48
Molasses	do	.75	.99	.24

a P. S. R.

Comparative freight rates from eastern points on hardware to Spokane and coast points, in carload and less than carload lots.

Commodity.	Carload rate to the coast.	Carload rate to Spokane.	Differential in favor of the coast.	Less than carload to coast.	Less than carload to Spokane.	Differential in favor of coast.
Agricultural hand implements—forks, hoes, and shovels	$1.25	$1.76	$0.51	$1.75	$2.75	$1.00
Axes, picks, and mattocks	1.25	1.91	.66	1.75	3.08	1.33
Bath tubs, cast iron	1.40	2.22	.82	2.00	3.48	1.48
Clothes wringers	1.15	1.93	.78	1.75	3.08	1.33
Earthenware, plumbers'	1.40	2.18	.78	2.00	3.33	1.33
Freezers, ice cream	1.40	2.25	.85	1.75	3.23	1.48
Handles, wooden—ax, pick, sledge	1.25	1.73	.48	1.75	2.57	.82
Hangers, barn door	1.10	1.64	.54	1.60	2.55	.95
Iron angle beams and channels	.75	1.23	.48	1.25	2.07	.82
Iron, bar, band, and hook	.75	1.23	.48	1.25	2.07	.82
Iron bolts, nuts, and washers	.80	1.28	.48	1.20	2.02	.82
Iron butts and hinges	.80	1.34	.54	1.15	2.10	.95
Iron chain	.85	1.33	.48	1.35	2.17	.82
Iron clevises	.80	1.28	.48	1.15	1.97	.82
Iron pipe, wrought	.65	1.085	.435	1.25	2.07	.82
Iron pipe, connections and fittings	1.00	1.43	.43	1.50	2.32	.82
Iron sheets	.90	1.18	.28	1.25	2.07	.82
Lanterns	1.10	1.95	.85	1.60	3.08	1.48
Nails and spikes	.77	1.22	.45	1.25	2.07	.82
Nails, horse	.85	1.39	.54	1.35	2.30	.95
Stamped ware—agate, enameled; granite iron ware	1.10	1.80	.70	1.60	2.93	1.33
Tacks, iron	.90	1.44	.54	1.40	2.35	.95
Tin plate	.662	1.142	.48	1.00	1.82	.82
Wagon material, felloes, axles, bolsters	.90	1.38	.48	1.40	2.22	.82
Wire (fence), barbed	.77	1.25	.48	1.25	2.07	.82

NOTE.—Please note the carload rate to Spokane is greater in many instances than the less than carload rate to the coast.

HOLLEY, MASON, MARKS & Co.
Per M.

SPOKANE, WASH., *May 15, 1905.*

The following gives you some of the rates the Spokane merchants are paying for the necessaries of life and comparison with what the coast and other points pay for the same articles:

Articles.		St. Paul to coast.	St. Paul to Spokane.	Difference or discrimination against Spokane.
Canned corn	C. L.	$0.90	$1.25	$0.35
Pickled fish	C. L.	1.20	1.50	.30
Candy	L. C. L.	2.20	a 2.60	.40
Chocolate	L. C. L.	1.75	2.60	.85
Spices	L. C. L.	1.25	1.94	.69

Articles.		Chicago to coast.	Chicago to Spokane.	Difference or discrimination against Spokane.
Candy	L. C. L.	$2.20	$3.00	$0.80
Cocoa and chocolate	C. L.	1.25	2.03	.78
Coffee	C. L.	.90	1.38	.48
Crackers	C. L.	1.65	2.20	.55
Lye	C. L.	b .75	b 1.23	.48
Pickles	C. L.	b 1.00	b 1.51	.51
Paper bags	C. L.	b 1.00	1.40	.40
Paper rolls	C. L.	b .75	1.19	.44
Soup	C. L.	b .75	1.20	.45

a C. L. b P. S. R.

Articles.		Philadelphia to coast.	Philadelphia to Spokane.	Difference or discrimination against Spokane.
Pickled fish	C. L.	$1.20	$1.71	$0.51

Articles.		Alexandria to coast.	Alexandria to Spokane.	Difference or discrimination against Spokane.
Lamp flues	C. L.	$1.40	$2.03	$0.63

Articles.		St. Louis to coast.	St. Louis to Spokane.	Difference or discrimination against Spokane.
Woodenware	C. L.	$1.35	$1.84	$0.49

Articles.		New Orleans, Lake Charles, Mississippi and Missouri River points to coast.	New Orleans, Lake Charles, Mississippi and Missouri River points to Spokane.	Difference or discrimination against Spokane.
Rice	C. L.	$0.55	$1.03	$0.48
Molasses	C. L.	.75	.99	.24

Articles.		Norfolk, Va., to coast.	Norfolk, Va., to Spokane.	Difference or discrimination against Spokane.
Peanuts	C. L.	$1.30	$1.69	$0.39

Articles.		Rome, N. Y., to coast.	Rome, N. Y., to Spokane.	Difference or discrimination against Spokane.
Canned corn	C. L.	$0.90	$1.43	$0.53
Mixed canned goods	C. L.	1.00	1.48	.48

Articles.		New York to coast.	New York to Spokane.	Difference or discrimination against Spokane.
Gelatin	L. C. L.	$1.75	$3.23	$1.48
Dried currants	C. L.	[a] 1.20	[a] 1.74	.54
Nutmegs	C. L.	1.25	2.03	.78
Spices	C. L.	1.25	2.03	.78
Starch	C. L.	[a] 1.00	1.54	.54
Cocoanut	L. C. L.	1.50	2.83	1.33
Cocoanut	C. L.	1.25	2.03	.78

Articles.		Iowa points to coast.	Iowa points to Spokane.	Difference or discrimination against Spokane.
Canned corn	C. L.	$0.90	$1.30	$0.40

Articles.		Duluth to coast.	Duluth to Spokane.	Difference or discrimination against Spokane.
Salt	C. L.	$0.60	$0.85	[b] $0.25

[a] P. S. R. [b] No water competition.

EAST-BOUND FREIGHT.

Articles.	Coast points to all points east of Missouri River.	Coast points to Spokane.	Difference.
Canned fish.....C. L..	$0.75	$0.55	$0.20
Salt or pickled fish in kits or barrels.....C. L..	.75	.75	.....
Dried fruit in boxes.....C. L..	1.00	.75	.25
Sugar in sacks or boxes.....C. L..	.75	.65	.10

L. F. BOOTHE,
Wholesale Grocers' Association.

STATEMENT OF MR. DON H. BACON, PRESIDENT OF THE TENNESSEE COAL AND IRON AND RAILROAD COMPANY, OF BIRMINGHAM, ALA.

Senator KEAN. Mr. Bacon, in connection with the terminal inquiry and lack of rates, and so forth, can you make some statement in regard to those specifications?

Mr. BACON. The Tennessee Company owns at some of its works a few railway tracks. Nearly all of its switching is done by the Birmingham Southern, the Birmingham Southern now owning tracks that formerly belonged to the Tennessee Company, but that were sold by the Tennessee Company in the year 1889.

We handle with our own locomotives over some tracks that we own and over tracks that are owned by the Birmingham Southern, much of the freight that we receive and that we ship, but in no place do we get any pay or are we allowed anything for the movements that we make. The coal that we mine, and the same is true of the iron ore, is delivered at our furnaces or mills either by the Birmingham Southern or by the Louisville, the Southern Railway, the Alabama Great Southern, or the Central Railroad of Georgia. And the shipments we make go over those roads and over the Illinois Central, and in all cases the freight is received by us or shipped by us without any payment to our company.

Senator KEAN. What is the extent of your traffic?

Mr. BACON. We may own at the furnaces in Tennessee and at our furnaces and mills in Alabama less than 10 miles of track. Probably not to exceed 10 miles of track.

Senator KEAN. As I understand, these are short pieces of track in different places, that connect with the main line of railways, for which you get no charge or allowance whatever.

Mr. BACON. Yes; nothing whatever.

Senator KEAN. And no allowance for switching charge?

Mr. BACON. None.

Senator KEAN. Is there any further statement that you desire to make in regard to railway rates or anything of that kind?

Mr. BACON. I do not think that there is.

Senator KEAN. The railroad rates in your part of the world are generally reasonable?

Mr. BACON. I had a comparison made two years ago. The rates on the northern railroads, on products of the same character that we manufactured, in Illinois, Pennsylvania, and Indiana, the rates that we pay to the Louisville and Nashville, the Central Railway of Georgia, the Southern Alabama, the Great Southern, which are the

railroads that we ship over, were compared in many cases, and we found that the rates we paid were slightly higher than those paid by our competitors, but I consider the rate we pay as eminently fair.

Senator KEAN. You know of no discrimination?

Mr. BACON. No; I do not.

Senator KEAN. Or rebates?

Mr. BACON. Not a cent.

Senator KEAN. Now, you have had at times your rates reduced, have you not?

Mr. BACON. Yes; our rates have been reduced, and they have also been advanced.

Senator KEAN. In other words, when your business was depressed your rates were reduced in order that you might go on and keep your mills open?

Mr. BACON. When the price of pig iron was very low—and of that commodity we shipped more than any other—the rates were reduced as far north as the Ohio River, that being as far as the road entering our works reached. When the market for pig iron advanced, sometime thereafter, the railroad rates were advanced.

Senator KEAN. You have no special objection to that? You are willing to share your profit with the railroad company?

Mr. BACON. We were content when they made the advance and pleased when they made the reduction.

Senator KEAN. What is the price of pig iron now?

Mr. BACON. At Birmingham, about $13 and $13.50 now for No. 2 foundry.

Senator KEAN. And it has been down to about——

Mr. BACON. Nine.

Senator KEAN. I do not know of anything else, Mr. Bacon. If you think of anything you want to say to us, we will be very glad to hear you.

Mr. BACON. I do not think of anything.

Senator KEAN. You prefer to have the rates fixed by the railroads in the first instance, or do you prefer to have the Commission or some other body make the rates?

Mr. BACON. I think it is fair for the railroads to make their rates.

Senator KEAN. And you would think that the existing condition of affairs is better than to try an experiment?

Mr. BACON. Yes.

(Thereupon the regular session of the committee adjourned until 11 o'clock a. m.)

STATEMENT OF HON. J. H. RICHARD, DISTRICT JUDGE OF THE ELEVENTH JUDICIAL DISTRICT OF IOWA.

The CHAIRMAN. I present herewith a letter from Hon. J. H. Richard, district judge of the eleventh judicial district of Iowa, as follows:

OPINION OF HON. J. H. RICHARD, DISTRICT JUDGE, ELEVENTH JUDICIAL DISTRICT, IOWA.

JUDGE'S CHAMBERS, ELEVENTH JUDICIAL DISTRICT,
WEBSTER CITY, IOWA, *May 15, 1905.*

Hon. STEPHEN B. ELKINS, *Washington, D. C.*

DEAR SIR: In response to the permission extended me by your letter of recent date I am sending you, under separate wrapper, by to-

day's mail the brief referred to. I think I understand your position in regard to the rate question from statements purporting to have been made by you appearing in the daily press and from your previous work upon such subjects. As I understand the matter, you doubt the economic rightness of conferring rate-making power upon a commission. We of the West do not agree with that position. I do not, however, discuss the economic phases of the question in the brief sent.

The proposals of the Commission are made the basis of the brief, the inquiry being as to whether or not such proposals can be embodied in a law, and if not, then what the nearest approach thereto. In considering those matters, as you know, it is necessary to cover a wide field. That has been done.

I have not followed the ordinary method of a brief, but have discussed somewhat the principles underlying the conclusions reached, made an application of such conclusions to the various bills proposed, and, further, support the conclusions reached by a full citation of authorities.

As to the bills, with the exception of the Esch-Townsend bill, which I have not specially examined, I find them all doing violence to certain fundamental principles of law. The outline at the beginning will give, in a general way, the main points in the brief.

Thanking you for the courtesy extended, permit me to remain,

Respectfully, yours,

J. H. RICHARD.

The Constitution and rate making.

The purpose and intent of this paper is comprehended within the limits indicated by the subject. Legal considerations only will then be treated, and no attention will be paid to matters of purely economic concern. Thus confined, the discussion will relate to the legal aspect of current proposals for conferring rate-making power upon the Interstate Commerce Commission, and the inquiry will take this form: Conceding the economic rightness of such proposals, then how, if at all, may they be so embodied in a law as that such law will not as a whole or in any of its separate and vital parts run counter to constitutional provisions?

The scope and direction of the inquiry will further appear by the outline which follows, and the summary at the end is intended as a broad and general application of the conclusions reached to the form and contents of a bill, thus being intended only as a sort of further statement in concrete form of such conclusions.

OUTLINE.

I. The two forms of government, Federal, or National, and State, the general authority of each over commerce pointed out, and the resulting division of railway control into (*a*) National controls and (*b*) State controls, with the limits of each and the relation of one to the other somewhat generally indicated so far as any pertinency to the topic warrants.

II. The law having reference to rates or to railway control indicated, as (*a*) interstate-commerce act of 1887 and amendments thereto, including the Elkins law of 1903; (*b*) the antitrust act of

1890, generally known as the "Sherman antitrust law," but in fact entitled "An act to protect trade and commerce against unlawful restraints and monopolies;" (*c*) Constitution of the United States, and decisions thereunder; (*d*) State railway commission laws.

III. State railway commission law briefly considered. Such laws as to the orders of the commission established thereby are subject to the same criticism now leveled at the interstate-commerce act of 1887. This and the remedy therefor considered.

IV. The main criticism of the present law is (1) that the Commission has no rate-making power, and (2) that if it had the law would still be ineffective, because (*a*) the evidence before the court in investigating an order of the Commission is not the evidence that was before the Commission in making the order, and (*b*) the Commission must appeal to the court for the enforcement of its orders, thereby leading to much delay. These various matters considered separately and together.

V. The various bills proposed are substantially alike in their main provisions, which are: (1) The Commission to have rate-making power; (2) rate orders to be operative at a given time by mere operation of law or order of the Commission; (3) the evidence before the Commission in making an order to be the evidence before the court in investigating that order; (4) unless the carrier takes the order to court within a given time for review then the order shall be final and effective. By so providing and by a penalty clause the burden of appeal is sought to be thrown upon the railway and the defects alleged to exist in the present law are sought to be corrected. Such bills are fundamentally defective. Why they are defective is discussed in what follows in paragraphs 6, 7, 8, and 9.

VI. Two distinct bodies with separate functions are thus of necessity considered in any such law: (1) A commission to make rates, and (2) a court to determine the validity of the rates so made.

VII. Rate making is legislative. Congress may fix rates or delegate such power to a commission. A court can not fix rates, either originally, upon appeal, or by way of review, for rate making is legislative.

The function of the courts is to determine whether or not rate schedules made by proper bodies are or are not reasonable, and if found unreasonable then to annul them, and this is a constitutional matter and therefore beyond the power of the legislative bodies to vary or deny. The duty thus resting upon the courts arises from the fifth and fourteenth amendments.

VIII. The separation of all governmental powers into legislative, executive, and judicial, each free, independent, and distinct from the others, finds clear and definite expression in the very framework of the Constitution. A legislative power can not be conferred upon a court, nor can a strictly judicial power be conferred upon a legislative body; thus, a court can not fix a rate, for that is legislative, nor can a commission enforce its own orders, for the power to decree and enforce its decrees resides only in a properly constituted judicial tribunal; and so, also, and for the same reason, an appeal or review by way of appeal can not be had in a court of an order made by a commission. Such a review must be by a distinct and independent proceeding.

IX. A Federal court derives its authority, when once established, from the Constitution, under which its power extends to all cases in law and equity arising under the Constitution, etc., hence (1) such

a court can not be prevented by a law from restraining under proper circumstances by injunction the enforcement of a rate schedule pending inquiry into its reasonableness by the court, for the court as a court of equity has the power to restrain by injunction under proper circumstances; (2) so, also, no time limit can be placed upon the right to ask a court as to whether or not a given rate schedule is or is not reasonable, for that is an inquiry as to whether or not the schedule is in harmony with the Constitution, as to whether it is or is not vital; (3) so, also, the evidence which a court may receive can not be determined by the legislature, but this does not mean that the legislature may not declare evidence received before one tribunal to be competent before another, nor that a legislature may not declare what evidence shall be conclusive under certain circumstances. The evidence before a commission is not analogous to the evidence before a master in chancery.

X. The penalty clause is considered as to whether valid or not. The application of the foregoing conclusions to certain of the bills introduced in the Senate and House committees, but no consideration is thus given to the Esch-Townsend bill, it not having been specially examined at the time of this writing.

XI. Summary.

I. THE TWOFOLD NATURE OF THE RAILWAY PROBLEM.

The people of the United States are subject to two forms of government—the Federal Government, which is a government extending over all the States, and the 45 State governments, the authority of each State government being confined to the State over which it exerts control. Commerce also, perforce, is of two kinds—interstate commerce and State commerce. Interstate commerce is the commerce among two or more States, and State commerce is commerce carried on within the boundaries of a State. Congress, under the Constitution, has full power over interstate commerce and may regulate it. The State alone has power over State commerce. The Federal Government can exert no control in the way of legislation over intrastate commerce, and the State government can exert no control over interstate commerce. Thus it is that railway regulation involves two sorts of regulation—(1) the regulation of the transportation carried on among two or more States, and (2) the regulation of transportation carried on within the boundaries of a single State.

II. THE GENERAL LAW.

In a general way the law which Congress has enacted to apply to interstate commerce is an act which was passed in February, 1887, known as the "interstate-commerce act of 1887." That act and the amendments thereto, including the Elkins law of 1903, constitute the law, in a general way, which now exists with reference to interstate commerce. In addition to that is the antitrust act of 1890, which forbids the making of any contract or arrangement in restraint of trade and which has been held by the Supreme Federal Court to apply to railway-rate agreements or contracts in respect to division of traffic, and also to the union of competitive railways in the form of a joint stockholding corporation.

III. STATE RAILWAY COMMISSIONS.

Thirty separate State governments have enacted laws for the control of railway companies. Twenty of these States have given State commissions power to fix rates for railway transportation within State boundaries. These State laws are in a general way the same as the act of 1887, except that in 20 States the State commissions have power to make railway rates. As already indicated elsewhere, when a State railway commission fixes a schedule of rates for a company incorporated under the laws of another State than the one making the rate and affected by such schedule, then such corporation may bring an action in a Federal court to restrain the operation of that schedule and to test its reasonableness; so, also, may such an action be brought by a nonresident bondholder or nonresident stockholder of such railway for the same purpose and in the same way. The action of a State commission is thus subject to the same difficulties of which complaint is now made as to the Interstate Commerce Commission; that is, (1) a rate order may remain for a long time in the courts and the rates thus fixed be inoperative during that time, and (2) the evidence taken before the State commission in the making of such rate schedule is not the evidence upon which the case is tried in the Federal court.

Again, there is this difference in favor of the interstate-commerce act as compared with such a condition of State railway traffic: The interstate-commerce act provides that when a rate order is taken to a Federal court and there tried, then, upon appeal therefrom, the order of the trial court *shall not be stayed during the pendency of the appeal*, while in a case to test the reasonableness of the rates fixed by a State board in the manner indicated there is no such provision preventing the staying of the decree or order of the trial court upon appeal, and consequently the general provisions of the Federal statutes in regard to appeals govern, and orders or decrees of the trial court in those cases (State cases) may be stayed upon appeal. None of the bills so far urged or presented undertake to remedy the difficulties existing in the way of the State regulation of railroads just indicated. A single section of any of the bills would cover it effectively. There is no reason why, if remedies should be made into law relating to interstate commerce, that the same remedies should not also be made to apply to State traffic, as suggested.

IV. CRITICISM OF PRESENT LAW.

The complaints made concerning the interstate-commerce act are (1) that the Interstate Commerce Commission does not have conferred upon it by that law the power to make rates, and (2) that by the method provided for the enforcement of the orders of the Commission, to wit, an appeal to the Federal courts to enforce them, much delay ensues, during which time the orders made by the Commission remain inoperative and of no effect; (3) that the evidence before the Commission in the making of the rate schedule is not the evidence before the court when the question of the rate schedule is investigated and determined, and (4) that as the law now is the burden of taking the rate schedule to the courts for investigation devolves upon the Commission or interested party, and it should rest upon the resisting railroad company.

The foregoing complaints, put in another way, are (1) that the Commission has no power to make rates, and (2), if it had, that power would be ineffective because of the delay that ensues in making its orders effective.

It is evident that the primary and fundamental thing in the relief desired is the authority to make rates. The conferring of that power alone, however, is not sufficient. The Commission say that the evidence upon which they act in making a rate schedule—that is, in investigating a complaint before them—ought to be the evidence upon which the court determines the reasonableness of the schedule made by the Commission. If that is not done, the claim is that the action of the Commission making rates will be largely negatived. The railroad companies will not put in their evidence before the Commission, and thus the case before the court is different, and this frequently leads to the overturning of the action of the Commission by the court. It is evident that such a condition renders less effective the power of the Commission. Again, it is said that the orders of the Commission, even if it has the rate-making power, must be enforced in a reasonable time in order to be fully effective, and that under present conditions the average life of a case before the courts is four years. That is not quite accurate. The law provides that the Commission shall enforce its orders by application to a circuit court, and further provides that an appeal from the circuit court shall not stay its decree.

The time required to test an order in that way *before the circuit court* has been from one to two years, owing to various delays. Quick enforcement of the orders of a commission is important to the efficacy of the rate-making power for two reasons: (1) During the time the order is not in force the conditions in the business world that made such order of value may so change as that when finally the order is enforced it is of no value, and again conditions may be such that when the order is finally effective an application for a change in the order would be sustained by the Commission in view of circumstances then existing; (2) if the order is for a higher rate for transportation, of course the company can at once put that order into operation; but if the schedule provides lower rates, then during one, two, or four years of court proceedings, as the case may be, the order remains ineffective. The result of that condition is that such higher rates are paid during the time the order is thus not in force. Certain suggestions have been made as to provisions to be given place in a bill to remedy the loss that occurs from a delay. These suggestions have looked toward the giving of relief to the shippers. One of the suggestions is that rebate slips be issued during the time of the delay, by which when the order is made final by action of the court shippers can secure overcharges. Another suggestion is that the railroad companies be obliged to put up a large bond during appeal to recompense shippers. Those provisions are all right so far as concerns the shipper, but the shipper is not the person who is injured by the high rate, except in occasional instances, as when the rates in one city or locality are unfair as to another city or locality. Suppose that the rate for the transportation of corn is 2 cents higher than it ought to be, who pays the additional 2 cents? Upon whom falls the loss of the excessive freight charges? Certainly not upon the shipper, for he takes into account the freight rate in buying his corn. If freight rates are high, he pays less for the corn. Either

that or the consumer pays more for the corn as a result of the excessive rate. The loss primarily falls in the great body of cases upon the man who has the corn or the product to sell to the shipper or upon the man who buys it upon the market. It falls either upon the consumer or upon the producer. The shipper and the trade alike can protect themselves by the price they pay or exact. Thus it is that this matter of making the order effective soon is a vital one and affects the great body of the people and not alone the small class of shippers or dealers.

V. THE VARIOUS BILLS.

Such are the conditions sought to be remedied in the interstate-commerce act. The various bills proposed attempt to give the needed relief, as follows: (1) By conferring rate-making power upon the Commission; (2) by seeking to make that rate-making power so conferred more effective by (*a*) providing that orders made by the Commission shall be operative at a given time; (*b*) by providing that unless the carrier takes the order of the Commission to a court for a review there then the order shall be final, thus seeking to throw the burden of appeal from the order upon the railway; (*c*) by directly providing that the evidence taken before the Commission, together with such other evidence as the court in its discretion may order taken, shall be the evidence upon which the reasonableness of the order shall be determined by the court. The foregoing are substantially the provisions of the Quarles-Cooper bill. Some of the other bills make the provision as to evidence much stronger by providing that the court shall have power to take additional evidence only under certain ironclad conditions. The Esch-Townsend bill is not included, that not having been specially examined.

The remedies thus sought to be applied are, (1) to confer rate-making power and (2) to make that power more effective in the ways mentioned. Such, then, being the remedies, let them be considered in their legal aspect. At least two distinct matters are of necessity embraced in any bill that will operate as a remedy in regard to the matters pointed out. The two particulars here referred to are legislative and judicial; thus the bills do provide that the Commission shall have rate-making power and also provide that the Commission may determine the date at which such orders as it may make concerning rates shall become effective. The bills then further provide that under certain conditions a review may be had in the courts, and further provide that in case a carrier fails to observe an order so made, then application may be made to the courts for enforcing the same by mandamus or injunction and also to recover a penalty fixed in the bills for failing to comply with the orders.

VI. TWO DISTINCT BODIES, A COMMISSION AND A COURT.

Thus there are provisions in the bills which relate to (1) a commission which shall have power to make rates and (2) to courts which shall assist in the enforcement of the orders made. Now, what is the rate-making power? Is it legal, administrative, or judicial, and what is the board or commission which has the power to make the rate? Is it a legal or administrative board, or both, or is it a judicial body? These questions are fundamental and decisive of many others of constitutional concern. Rate making is primarily

and fundamentally legislative or administrative. It is never judicial in the sense that a court is spoken of as being judicial. A board, such as is the Interstate Commerce Commission, with power to make rates for the future, is purely an administrative board, a board that enforces a law made by carrying out some of its provisions, and such a board is exercising a legislative function when it establishes a rate. In doing that the Commission will act as and for the legislature. It will stand in place of the legislature in so doing, and is distinctly and fundamentally therein acting legislatively. These excerpts abundantly establish that proposition:

> There were three obvious and dissimilar courses open for consideration. Congress might itself prescribe the rates, or it might commit to some subordinate tribunal this duty, or it might leave with the companies the right to fix rates, subject to regulations and restrictions, as well as the rule which is as old as the existence of common carriers, to wit, that rates must be reasonable. (Inter. Com. Com. *v.* Cin., N. O. and T. P. Rwy., 167 U. S., 493.)
>
> Such a commission is merely an administrative board created by the State for carrying into effect the will of the State as expressed by its legislation. (Railroad Commission Cases: Stone *v.* F., L. and T. Co., 116 U. S., 307; Reagan *v.* F., L. and T. Co., 154 U. S., 394.)

VII. RATE MAKING IS LEGISLATIVE; THE COURT DETERMINES WHETHER THE RATE MADE IS REASONABLE OR NOT.

> There can be no doubt of the general power of the State to regulate the fares and freights which may be charged or received by a railroad or other carriers and that this legislation can be carried on by means of a commission. (Reagan *v.* F., L. and T. Co., 154 U. S., 394.)
>
> It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act—but an entirely different thing to prescribe rates which shall be charged in the future—that is a legislative act.

These cases are there cited: C., M. & St. P. Rwy. Co. *v.* Minn., 134 U. S., 413; Reagan *v.* F., L. and T. Co., 154 U. S., 362–397; St. L. and S. F. R. Co. *v.* Gill, 156 U. S., 649–663; Cinn. *v.* Inter. Com. Com., 162 U. S., 184–196; Texas and Pac. Rwy. Co. *v.* Int. Com., 126 U. S., 197–216; Munn *v.* Illinois, 94 U. S., 113–114; Pick *v.* Chicago N. W. Rwy. Co., 94 U. S., 164–178; Memphis and L. R. Co. *v.* So. Express Co. (Express Case), 117 U. S., 1–29.

The following excerpt carries forward the statements made in the extracts just given and directly compares the making of a rate schedule to the making of a law, and at the same time it defines the limits of judicial action:

> If a law be adjudged invalid, the court may not, in a decree, attempt to enact a law upon the same subject which shall not be obnoxious to any legal objections. It stops by simply passing its judgment on the validity of the act before it. The same rule obtains in a case like this. (154 U. S., 400; see also 39 L. R. A., 38.)

So the Commission in the making of a rate schedule is acting as a legislature performing a legislative act, and such board in all its functions is legislative and administrative—legislative in its rate-making powers; administrative in the sense that it is administering or is engaged in enforcing or carrying out an enactment of Congress, and is thus administering the law.

What is the peculiar relation of the courts to rate making—that is, what may the court have to do with a rate schedule? The court has no power to make a rate schedule or a rate. Why not? Be-

cause the court is a court and rate making is a legislative act. Whether or not such rate schedule when made is in accord with the Constitution, however, is a matter peculiarly within the jurisdiction and determination of a court. Does the rate fixed violate any of the provisions of the organic law? If so, it is invalid, and it is the peculiar function of the courts to determine judicially, *after the manner of courts for ages*, *whether or not* the rate schedule does run counter to constitutional provisions. If it does the courts will annul it. In other words, under the law of the land as determined by the holdings of the Supreme Federal Court it is the power and duty of the courts to determine whether any rate schedule enacted by the Commission is fair and reasonable, and further that it is a judicial question because of certain constitutional provisions, to wit, the fourteenth and fifth amendments to the Constitution. These excerpts abundantly support and substantiate the statement just made:

Railroad companies are carriers for hire. They are therefore engaged in a public employment affecting the public interest and, under the decision in Munn *v.* Illinois, subject to legislative control as to their rates of fare and freight. (C., B. and Q. R. R. Co. *v.* Cutts, 94 U. S., 155; C. M. and St. P. Rwy. *v.* Ackley, 94 U. S.; Piek *v.* C. and N. W. Rwy. Co., 94 U. S., 164.)

In mere private contracts relating to matters in which the public has no interest what is reasonable must be ascertained judicially. But this is because the legislature has no control over such a contract. The controlling fact is the power to regulate at all. If that exists the right to establish the maximum as one of the means of regulation is implied. (Munn *v.* Illinois, 94 U. S., 113–154.

The foregoing is an extract from one of the so-called "Granger Cases" decided in 1875. In those cases the Supreme Federal Court held that the legislature had full power to fix rates and fares, and that what those rates should be was a matter of legislative policy alone, over which the courts had no control. This doctrine has since been abandoned.

In Chicago and Grand Trunk Railway Company *v.* Wellman (143 U. S., 339) the court, in answer to the suggestion that the legislature had no authority to prescribe maximum rates for railroad transportation, said that "the legislature had power to fix rates and the extent of judicial interference is protection against unreasonable rates." (Smyth *v.* Ames, 169 U. S., 524–525; C. and St. P. Rwy. Co. *v.* Minn., 134 U. S., 418–466; Stone *v.* F., L. and T. Co., 116 U. S., 307.)

The courts are not authorized to revise or change a body of rates imposed by the legislature or a commission; they do not determine whether one rate is preferable to another, or what under all circumstances would be fair and reasonable between the carriers and the shippers; they do not engage in any mere administrative work; but still there can be no doubt of *their power* and *duty* to inquire whether a body of rates prescribed by a legislature or a commission is unjust and unreasonable and such as to work a practical destruction to rights of property, and if found so to be to restrain its operation. (Reagan *v.* F., L. and T. Co., 154 U. S., 397.)

Thus the courts have resting upon them the duty of determining whether or not rates established by a commission are just and reasonable, and railroads or persons affected adversely by such rates have the right to present the matter to a court for its determination, and such right is a constitutional right. A rate schedule which is unreasonable and unfair is null and void, because it conflicts with the Constitution. One of the bills introduced contains a provision by which a commission shall determine conclusively whether or not a rate schedule is reasonable and whether or not the rates fixed by it

are just and reasonable and denies to the court the power of passing upon that question. Of course such a bill is invalid and ineffective for that reason.

VIII. LEGISLATIVE AND JUDICIAL POWERS CAN NOT BE COMBINED.

The Commission is legislative, hence no power can be conferred upon it not legislative or administrative; likewise, no power not judicial can be conferred upon a court. Under the Constitution there is an exact cleavage and division of the three governmental powers. They are made distinct and separate, and the line is firmly and clearly drawn by the separate provisions of the Constitution as to the different departments of Government.

Thus the Constitution provides:

(*a*) All legislative powers herein granted shall be vested in a Congress.
(*b*) The executive power shall be vested in a President.
(*c*) The judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish.

The distinction between a legislative body or power and a judicial body or power is so distinct that a legislative power can not be conferred upon a judicial body or a judicial power upon a legislative body. These excerpts abundantly support that statement:

And in Murray *v.* Hoboken Company (18 How., 272–284) Mr. Justice Curtis, after observing that Congress can not withdraw from judicial cognizance any matter which from its nature is the subject of a suit at common law, or in equity, or admiralty, nor on the other hand bring under judicial power a matter which from its nature is not a subject for judicial determination. (Ferreira *v.* U. S., 54, U. S., 40–46; Hayburn's Case, 2 U. S., 409; Gordon *v.* U. S., 117 U. S., 697; Re Sanborn, 148 U. S., 222; Int. Com. Com. *v.* Brimson, 154 U. S., 480, etc.)

Congress may not impose upon the courts of the United States any duties not strictly judicial. (Int. Com. Com. *v.* Brimson, 154 U. S., 485.)

This is true as to the establishment of a rate and of the exercise of the rate-making power. In support of which see the following:

As we have seen, it is not the function of courts to establish a schedule of rates. It is not, therefore, *within our power to prepare a new schedule or rearrange this.* Our inquiry is limited to the effect of the tariff as a whole.

They (the courts) do not engage in any mere administrative work. (Reagan *v.* F., L. and T. Co., 154 U. S., 897.)

If a law be adjudged invalid the court may not in a decree attempt to enact a law upon the same subject which shall not be obnoxious to any legal objections. It stops with simply passing its judgment on the validity of the act before it. The same rule obtains in a case like this. (154 U. S., 400; see also 39 L. R. A., 38.)

As further showing that judicial powers can not be conferred upon legislative or administrative bodies are the following excerpts:

It must be admitted that if the auditing of this amount and the ascertainment of its balance and the issuing of this process was an exercise of the judicial power of the United States the proceeding was void, for the officers who performed these acts could exercise no part of that judicial power. They neither constituted a court of the United States nor were they, or either of them, so connected with any such court as to perform even any of the ministerial duties which arise out of judicial proceedings. If we were of the opinion that this subject-matter can not be the subject of a judicial controversy, and that consequently it can not be made a subject of judicial cognizance, the consequence would be that the attempt to bring it under the jurisdiction of a court of the

United States would be ineffectual. (Den. *v.* Hoboken Land and Imp. Co., 59 U. S., 372–386.)

Again, the division is further shown by the fact that only a judicial body can enforce its decrees or judgment. A legislative or administrative body can not enforce its orders. It must appeal to a court to do so. This is another fundamental distinction between a legislative or administrative body and a court. The power to enforce its orders can not be conferred upon an administrative body. In support of which see this:

The inquiry, whether a witness before a commission is bound to answer a particular question propounded to him, or to produce books, papers, etc., in his possession and called for by that body (Interstate Commerce Commission) is one that can not be committed to a subordinate, administrative, or executive tribunal for final determination. Such a body could not, under our system of government, and consistently with due process of law, be invested with authority to compel obedience to its orders by a judgment of fine or imprisonment. Except in the particular instances enumerated in the Constitution, and considered in Anderson *v.* Dunn (19 U. S., 304), and in Kilbourn *v.* Thompson (103 U. S., 188–190), of the exercise by either House of Congress of its right to punish disorderly behavior upon the part of its members, and to compel the attendance of witnesses and the production of papers in election and impeachment cases, and in cases that may involve the existence of those bodies, the power to impose *fine or imprisonment in order to compel the performance of a legal duty imposed by the United States can only be exerted under the law of the land by a competent and judicial tribunal having jurisdiction in the premises.* (Interstate Commerce Com. *v.* Brimson, 154 U. S., 485; Whitcomb's Case, 120 Mass., 118.)

Congress has the power under the Constitution to establish courts, the provision of the Constitution being as follows:

The judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as the Congress may from time to time ordain and establish.

But a court when thus established by Congress has with reference to the *subjects and persons* over which it has jurisdiction *the powers given it by the Constitution;* that is to say, the power of such a court extends to all *cases of law and equity* within its jurisdiction arising under the Constitution and the laws and treaties of the United States, and it exercises those powers with the machinery of a court provided "by the wisdom of the ages." In support of the statement just made are the extracts which follow:

The judiciary power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made on their authority, etc.

Cases may be defined as "where parties litigate before a court as to rights of property or person." Cases here seem to include all cases, criminal as well as civil, and controversies only such as are of a civil nature.

This clause enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws, and treaties of the United States when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when a subject is submitted to it by a party who asserts his right in the form prescribed by law. It then becomes a case, and the clause declares that the judicial power shall extend to all cases arising under the Constitution, laws, and treaties of the United States. (Int. Com. Com. *v.* Brimson, 154 U. S., 475; Osborne *v.* Bank of U. S., 27 U. S., 738–819; Don *v.* Hoboken Land and Imp. Co., 59 U. S., 272–284.)

Mr. Justice Field, speaking for the court, said that the term "cases" and "controversies" in the Constitution embraced the claims or contention of litigants brought before the courts for adjudication by regular proceedings estab-

lished for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs. (Int. Com. Com. *v.* Brimson, 154 U. S., 476; Smith *v.* Adams, 130 U. S., 173.)

As to what constitutes a case or a controversy, and as to the form required, appears further in the following:

Is it not clear that there are here parties on each side of a dispute involving grave questions of legal rights, that their respective positions are defined by pleadings, and that the customary forms of judicial procedure have been pursued? The performance of the duty which, according to the contention of the Government, rests upon the defendants, can not be directly enforced except by judicial power. One of the functions of a court is to compel a party to perform a duty which the law requires at his hands. If it be adjudged that the defendants are, in law, obliged to do what they have refused to do, that determination will not be merely ancillary and advisory, but, in the words of Sanborn's Case, will be a "final and indisputable basis of action" as between the Commission and defendants, and will furnish a precedent in all similar cases. It will be as much a judgment that may be carried into effect by judicial process as one for money, or for the recovery of property, or a judgment in mandamus commanding the performance of an act or duty which the law requires to be performed, or a judgment prohibiting the doing of something which the law will not sanction. It is none the less the judgment of a judicial tribunal dealing with questions judicial in their nature, and presented in the customary forms of judicial proceedings, because its effect may be to aid an administrative body in the performance of duties legally imposed upon it by Congress in execution of power granted to it by the Constitution. (Com. *v.* Brimson, 154 U. S., 480, spec. 487–489.)

This is the power of a court as established by the Constitution itself; and no legislative body, Congress included, can take from a court the power given it by the Constitution. These excerpts illustrate that:

The idea that any legislature, State or Federal, can conclusively determine for the people and for the courts that what it enacts in the form of law or what it authorizes its agents to do is consistent with the fundamental law is in opposition to the theory of our institutions. The duty rests upon all courts, Federal and State, when their jurisdiction is properly imposed, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation. This function and duty of the judiciary distinguishes the American system from all other systems of government. The perpetuity of our institutions and the liberty which is enjoyed under them depend in no small degree upon the power given the judiciary to declare null and void all legislation that is clearly repugnant to the supreme law of the land. (Smyth *v.* Ames. 169 U. S., 528—Nebraska Rate Case; Murray *v.* Hoboken Co., 18 How., 274–284; Ferreirs *v.* U. S., 54 U. S., 40–46; Haybrun's Case, 2 U. S., 409; Gordon *v.* U. S., 117 U. S., 687; Re Sanborn, 148 U. S., 222; Inter. Com. Com. *v.* Brimson, 154 U. S., 480, etc.)

IX. CERTAIN POWERS OF COURTS CONSIDERED.

The foregoing citations show that courts have certain powers as courts—that is, a Federal court has power to try all cases that may arise before or within its jurisdiction in law or equity arising under the Constitution or laws and treaties of the United States, and has power in so doing to try these cases as a court; and, further, these powers may not be taken from it by law. Any attempt to do so will be nullified by the courts as unconstitutional. To illustrate: A circuit court has jurisdiction in cases where the amount involved is $2,000 or more, arising between persons of different States. Now, that is a case within the jurisdiction of that court. Suppose Congress should say that while the circuit court shall have jurisdiction to try cases in which the amount involved is over $2,000, arising between

persons residing in different States, in such cases the court shall not exercise equity powers. What would happen? The courts would simply nullify the provision as being unconstitutional. Why? Because that would be a direct attempt of the legislative body to take from a court the powers which it has as a court by direct constitutional establishment.

Again, the illustration taken will be sufficient for another purpose. Courts of equity—and all Federal courts are courts of equity—in cases within their jurisdiction may, when the circumstances are proper, issue injunctions restraining persons from doing certain acts or commanding them to do certain acts. Now, suppose that Congress should give to a Federal court jurisdiction in a certain class of cases, but should at the same time say that that court must not issue an injunction in a given case. What would happen? The court would simply nullify that provision. Why? Because a court by virtue of its equity powers has the right to issue injunctions under proper circumstances, and what those circumstances are the court will determine, and such a provision would be an attempt of the ligislature to take from the court a power which it has as a court under the Constitution. To be more specific, suppose that Congress declares by law that a Federal court shall have jurisdiction to determine whether a rate schedule enacted by the Commission is reasonable or not, but at the same time declares that the court shall not have the power during the pendency of the hearing to restrain the enforcement of the rate schedule. What happens? Such provision is simply nullified by the courts. Why? Because a court, as an equity court, has a right under given conditions to restrain the enforcement of a measure which is alleged to be unconstitutional, especially so when its enforcement will work irreparable harm or damage.

Again, suppose that a Federal court has jurisdiction over a given subject—as, for instance, that a court has, as it does have, jurisdiction to inquire into the reasonableness of a rate schedule—and suppose, further, that Congress should say by a law that unless such inquiry into the reasonableness of a rate schedule be made within twenty days after the enactment of the schedule or notice thereof, thereafter such schedule shall be final and conclusive. What happens? The court nullifies that provision. Why? Because a court has the right at any time in a proper case before it, by virtue of its powers as a court under the Constitution, to determine whether or not any law or any administrative order is or is not constitutional. If it did not have this power all a legislature would need to do to invade and trample upon constitutional rights would be simply to embody in any law a provision that unless the law were tested by application to a court within a given time thereafter the law should be constitutional.

In further exemplification of the fundamental difference between a lawmaking body and a court, and as further showing that powers belonging to the one can not be conferred upon the other, let it be said that they act, not only upon different subjects, but they act in a different way; thus, a lawmaking body, such as is a railway commission, may take evidence in its investigation, but the evidence is taken *to aid the commission, not* to aid a party, and the law which confers upon the commission power to secure testimony is said by the courts to be lawful because that body has a right to testimony as an administrative body that will assist it in doing its proper work as such

body. In all that the administrative body does it is concerned with the question of whether it is advisable to make a given order a law in substance. It has nothing to do with the settlement of conflicting claims of parties.

Now, consider a court in action. Parties are before it; one makes claim against the other. The court investigates the facts with reference to the claims or contentions made by the parties, and having determined the facts from the evidence presented to it, then determines what the law is and applies the law to the facts, then renders judgment and enforces it. The court is concerned not with the making of a law, but with the ascertainment of what the law is. The two functions, lawmaking and law interpreting, are totally, primarily, and fundamentally distinct, separate, and unlike. In the original Granger cases, the first railway rate cases, the court held that the making of rates was a purely legislative matter, and, of course, holding that to be the law, then the courts had nothing to do with it and could not inquire into it. Why not? Because under such view it was purely a legislative matter, and the court is a judicial body and has nothing to do with a purely legislative question. For the same reasons a court can not act as a review court of a legislative matter except as a court. The legislative matter in a rate schedule is whether or not it is proper to make such schedule, and the inquiry before the court as to such schedule is as to whether or not that schedule violates the constitutional rights and privileges of a particular company. Of course the Commission in making a schedule seeks to make a law (rate schedule) that will be constitutional, but so does a legislature in making a law. Consider the way a court acts as an appeal court. The district court of Iowa is an appeal court as to a justice court, but the district court in acting upon a case appealed from a justice court passes upon the questions of law before the justice court the same as the justice court. The case is appealed from the district court to the supreme court. The supreme court passes upon the same questions of law as were before the district court, and passes upon them as a judicial body. In the district court the court lays down the rules of law for the jury, and before submitting the case to the jury for the determination of matters of fact by them determines whether or not there is a case presented by the evidence under the law to submit to the jury; and when the case as to its facts has been determined by the jury, then the court determines whether the jury have acted legally in respect to their action in case that matter arises, and upon an appeal to the supreme court the same matters are determined in the same way by the supreme court, *but as an appellate court.* Each of the courts—justice, district, and supreme—thus act upon the same matters and may act as courts.

An appeal can not for the foregoing reasons be taken *from* a commission to a court. A review can only be had by a separate and distinct application to the court. The following support the foregoing: Murray *v.* Hoboken Co., 18 How., 272–284; Ferreira *v.* U. S., 54 U. S., 40–46; Heyburn's Case, 2 U. S., 409; 148 U. S., 222, and 154 U. S., 430.

For the same reason the evidence taken by an administrative body can not be made the only evidence upon which a court must act in determining some matter with reference to the action taken by an administrative or legislative body. Whether or not evidence offered

by *a party* in a proceeding of any kind may or may not be declared to be competent evidence in a court as against such party so far as it is material, etc., is not the subject here considered. Such power to so declare is, of course, within the power of a legislature. Courts can not be hedged about or limited to such evidence, though. The thing that is here considered is that such provisions are so placed in the bills and so worded as to *indicate the intent to make the courts mere reviewing bodies, mere appellate bodies to the Commission.* If that is the intent of such bills, then such provisions are for that reason unconstitutional, and that such is the intent is plainly within the proper construction of the bills.

The distinction between the legislative body and a court body is primary and fundamental. To say by a law (1) that an appeal or review of the action of the lawmaking body in making that law shall be taken to a court for determination there as to whether the lawmaking body should have done what it did do with reference to the law, and (2) that the evidence that was before the lawmaking body concerning the law it made shall be all the evidence upon which the court shall determine the matter is the same in kind as to declare by another law (1) that a review shall be had in a court by direct appeal to that court of what an administrative body has done within its powers, and (2) that the evidence taken by the administrative body in so doing shall be all the evidence before the court.

Such a law would be invalid for at least two reasons—(1) the power to review upon direct appeal the act of a legislative body can not be conferred upon a court; (2) the evidence that a court may receive in acting upon a matter properly before it can not be so limited or confined by the legislature.

A case involving the constitutionality of a law does not arise that way—i. e., by appeal to a court *from* the lawmaking body. Take a contest over a State railway schedule. A railway affected applies to a proper court stating that the commissioners, who are made defendants, are about to enforce the schedule, etc.; that the rates fixed by the schedule are unreasonable and therefore unconstitutional, and that a multiplicity of suits will arise and irreparable damage ensue to plaintiff or plaintiffs by reason of which a temporary and permanent injunction is asked restraining the enforcement of the schedules. There are parties and issues before a proper tribunal with power to render judgment upon trial or hearing and with power to enforce such judgment when rendered.

The Interstate Commerce Commission, in one of their reasons to justify the request that the evidence before them shall be the evidence before the court, state that such is the rule as to the report made by a master commissioner of chancery. The general rule relative to such a report is that the report of the master commissioner shall be held to state the facts, unless excepted to, and if any exceptions be made to the report they must refer to the statements of the master in support of them or must refer the court to the evidence before the master supporting them. The trouble with this claim is that the master commissioner is a court official and he is acting judicially in what he does as a commissioner, and hence the reasoning is not accurate because the railway commission is not such a judicial body and can not be such body.

As already indicated, a legislative or administrative body can not enforce its orders, nor can power be conferred upon it to enforce its orders. Application must be made to a court for enforcement in some form. The interstate-commerce act of 1887 provides that application may be made by the Commission to a circuit Federal court for enforcement of its orders. The attempt is made in the proposed measures to enforce by way of penalty.

The bills contain a section authorizing what is called a review in the circuit court, and also another section authorizing application to a court to enforce obedience to an order by mandamus or injunction, and also providing for a suit in addition thereto to recover a heavy penalty for failure to obey. Of course the object of this penalty clause is apparent. The permission to review is to enable the carrier to have a court investigate the reasonableness of the rate. If court action be not invoked by the carrier in the time limit there fixed, twenty days, then the penalty clause may be enforced. The object of these provisions is to compel the carrier to take the rate schedule into court, thus to throw the burden of appeal or review upon the railroad. Certainly the railway will not permit the time limit to expire so as to make the order final. As already appears, the time limit to the Commission to review is unconstitutional.

X. THE PENALTY CLAUSE OF RATE BILLS.

The penalty clause will now be considered. The attempt will be to show (1) that it is unconstitutional, and (2) if not unconstitutional in toto, then if the act or the clause itself does not permit of the reasonableness of the rates being inquired into when the *penalty clause is sought to be enforced, then that fact renders the provision unconstitutional.*

Consider, first, whether or no the clause is in toto unconstitutional. The penalty is excessive, and if a railroad becomes liable under it for many days new bond issues will be required, or it will be necessary, for a few days at least, to raise rates. Now, railways affected by a rate schedule have the right to a judicial inquiry as to the reasonableness of that rate schedule, and any law denying that will be annulled. A schedule that is unfair and unjust is unconstitutional, and ought not to be, and is not, binding upon a railway. Then, in some cases of attempt to enforce the penalty clause under certain rate schedules the court will find the rate schedule unreasonable, and hence will not enforce the penalty clause. A carrier has a constitutional right to refuse obedience to an unjust rate schedule, but must a carrier take the chances of an extreme and excessive penalty that will bankrupt or financially cripple it if it believes the schedule wrong? Again, different courts may not take the same view of the reasonableness of the schedule, and hence the carrier would be liable in one court and not in another court. Clearly no penal clause should stand under such circumstances. One would hesitate to stand upon what was believed to be right under such conditions. *It is a species of compulsion without process.* Such a condition is met by the following authorities: Louisville and N. R. Co. *v.* Commonwealth, 33 L. R. A., 213; Louisville and N. R. Co. *v.* Railroad Com.,

19 Fed., 674 (this case is referred to and approved by distinguishing it from another case in Railroad Com. Case, 116 U. S., 336).

The following excerpts are found in the first two cases:

Penalties can not thus be inflicted at the discretion of a jury. Before the property of a citizen, natural or otherwise, can be thus confiscated, the crime for which the penalty is inflicted must be defined by the lawmaking power. The legislature can not delegate this power to a jury. If it can declare it a criminal act for a railroad corporation to take more than a "fair and just return" on its investment, it must, in order to the validity of the law, define with reasonable certainty what would constitute such "fair and just return." The act under review does not do this, but refers it to the jury to supply the omission. No railroad company can possibly anticipate what view a jury may take of the matter, and hence can not know, in advance of the verdict, whether its charges are lawful or unlawful. One jury may convict for a charge made on a basis of 4 per cent, while another might acquit an accused who had demanded and received at the rate of 6 per cent, rendering the statute, in its practical working, as unequal and unjust in its operation as it is indefinite in its terms. (33 L. R. A., 212, quoting from the above cases.) That section, by itself, makes the offense to consist in taking more than a fair and reasonable rate of toll and compensation without reference to any standard of what is fair and reasonable. In such cases, it may be seen, different persons would have different opinions as to what is a fair and reasonable rate; courts, and juries, too, would differ, and at one time or place a defendant might be convicted and fined in a large amount for the same act which, in another place or at another time, would be held to be no breach of law, and what might be thought a fair and reasonable rate on one road might be considered otherwise upon another road.

The foregoing is quoted from Chicago, B. and Q. Ry. Co. *v.* People, 77 Ill., 443, in Louisville and Nashville *v.* Commonwealth, supra; 33 L. R. A., 213.

The writer is not unaware of the selling in which the foregoing excerpts appear, but the reasoning is not without close application to the topic being considered here.

However the penal clause finds strong support in United States *v.* Brimson (154 U. S.). In that case, though, a penal clause was not involved, being referred to only as conceded, hence the court does not by any means pass upon its validity, and furthermore, while undoubtedly a penal clause to compel the *attendance of witnesses and production of papers* before legislative bodies under proper circumstances would be enforced, it does not by any means follow that a penal clause would be enforced in a rate matter. The two are dissimiliar in many respects. The one is for purposes of information to the Government; the other affects only private rights and can be better enforced another way. No matter what the authority of the case is upon the penal clause, it, at least, establishes these propositions:

(1) That all legal objections to the enforcement of a rate schedule can be raised in the proceeding to enforce it.

(2) That it must be permitted to be raised in that way, otherwise there is a denial of judicial investigation of the rate schedule and the clause is therefore unconstitutional.

It was said in argument that the twelfth section (of interstate-commerce act of 1887) was in derogation of those fundamental guaranties of personal rights that are recognized by the Constitution as inhering in the freedom of the citizen. It is scarcely necessary to say that the power given to Congress to regulate interstate commerce does not carry with it any power to destroy or impair those guaranties. This court has already spoken fully upon that general subject in Counselmen *v.* Hitchcock. (142 U. S., 547.) We need not add anything to what has there been said. Suffice it in the present case to say that as the Interstate Commerce Commission by petition in the circuit court of the United States seeks, upon grounds distinctly set out, an order to compel appellees to

answer particular questions and to produce certain books, papers, etc., in their possession, it was open to each of them to contend before that court that he was protected by the Constitution from making answers to questions propounded to him, etc.

Whether the Commission is entitled to the evidence it seeks, and whether the refusal of the witness to testify or to produce books, papers, etc., in his possession, is or is not in violation of his duty or in derogation of the rights of the United States, seeking to execute a power expressly granted to Congress, are the distinct issues between that body and the witness * * * ; and those issues made in the form prescribed by the act of Congress are so presented that the judicial power is capable of acting on them.

The question here presented is substantially, if not precisely, that which would arise if the witness was proceeded against by an indictment under the act of Congress declaring it to be an offense against the United States for anyone to refuse to testify before a commission after being summoned, etc.

Here is directly the statement that in any such prosecution the proper constitutional objections to responding to the questions asked or to produce books may be raised; so with a penalty clause, such objections could be urged.

Finally with reference to the measures considered, the time limit of the right to review and the attempted limitation upon the right of a court to stay the operation of the rate order are unquestionably invalid and unconstitutional.

As to the penalty clause and the provision as to hearing or review proceedings, there are several possible situations. The hearing or review provision is undoubtedly unconstitutional, if it is a review provision, but I consider it as though it may be found otherwise. If the penalty clause be invalid, then two possible situations arise. The first arises, if the hearing clause be good; the second arises if the hearing clause be invalid. If the penalty clause be invalid as to the penalty, and if the hearing clause be good, still no railroad would proceed under the hearing clause, because a railroad company would only take advantage of that clause in order to escape the penalty, and if the penalty be invalid, then there will be no reason for the company to take advantage of the hearing clause. That being true, the order of a commission would have to be enforced under the penalty clause, by which application may be made for mandamus or injunction to a court. Now, that provision for enforcing the orders of a commission, since it is contrary to the method of enforcement provided by the act of 1887, repeals the provision of the act of 1887. That being true an appeal from the court proceedings to enforce the order under such clause could be made to stay the decree or order of the trial court, because there is no provision as to the penalty clause method that an appeal will not stay the order made by the trial court. The result of this is that such a condition would lead to a rate order being longer inoperative than it may now be under the present act.

Again, if the hearing clause be invalid, and if the penalty clause be invalid, then, of course, the order of a commission would have to be by the method just noted.

Again, if the penalty clause be valid, then two situations may arise: (1) If the hearing clause be good, and (2) if the hearing clause be not good. If the hearing clause be good, then the railroad company may apply to a court to stay the penalty during the pendency of the action. An appeal from the order of a trial court in that proceeding would not stay the decree or order of the trial court. That would be all right. The trouble with it, however, is that the

hearing clause is invalid and the penalty clause is a doubtful provision. Again, suppose the hearing clause invalid and the penalty clause valid. Then, the railway company could not apply under the hearing clause to a court to stay the operation of the penal clause, but would apply to the court (circuit court) under the provisions that now exist, and would thus stay the penal clause until the court determined the reasonableness of the schedule. But, if the railway company should proceed in that way, then there is no provision of the law that would prevent an appeal staying the order of the trial court, because such application for a stay would be made under the general law applicable thereto and not under the special statute considered.

XI. SUMMARY.

To give the relief requested by the Commission—that is, to confer rate-making power and to provide for the quick and effective enforcement of the orders of the Commission and to otherwise provide for the regulation, control, and supervision of interstate commerce so far as concerns interstate transportation—the following matters should be embodied in a law in an *authoritative* and *direct* way so as to eliminate all construction as to what power is in fact conferred:

1. Confer upon the Commission full rate-making power—full power to make rates after hearing upon complaint made as well as upon investigation made by the Commission upon its own motion. To confer upon the Commission power to make rates upon hearing had upon complaint of existing rates is *substantially* the same as to confer upon the Commission power to make rates after hearing upon complaint and also power to make rates upon investigation upon the motion of the Commission *because one complaint can be made sufficiently broad to include many thousands of articles* as many investigations or hearings had fully shown. Railroad men also complain that the same power is substantially conferred by the two provisions, as may be seen by an examination of the report of the Industrial Commission.

2. A larger Commission and more effective machinery should be provided with such a distribution of work as to enable the Commission to promptly and properly and with due consideration dispose of all matters before them, thus doing away with unnecessary delay before the Commission.

3. A commerce court should be established so as to permit of prompt enforcement of orders of the Commission, thus doing away with the delay that now results in such procedure.

4. Such courts should have exclusive jurisdiction of matters arising from the enforcement of the interstate-commerce act and from the *enforcement of similar laws regulating State transportation by State commissions*, except criminal matters and also except that parties may avail themselves of recourse to the State courts so far as provided by the States themselves. Such commerce court is to have the power possessed by circuit Federal courts over all such matters. This will tend to do away with the delay which now occurs in the enforcement of the orders of State commissions when such orders are carried to the Federal courts, *as is usually done when parties interested* or bondholders of interested roads are citizens of another State than the State in which the order is made.

5. Provision should be made for appeal from the trial commerce court, but such appeal should not stay any decree or order of the trial court.

6. (*a*) An order of the Commission shall become effective within thirty days from the service of notice thereof upon the carriers affected unless such order be suspended by a proper court order, as is now done upon application to the courts.

(*b*) If the order is not obeyed at the time it thus becomes effective, then the Commission or an interested party may invoke the aid of the commerce court to enforce the same.

(*c*) Provide for penalties to be enforced upon failure to comply with an order during the time it is operative, but make this provision directly responsive to the power of the court to suspend its operation under proper circumstances. This provision is intended to compel the carrier to resort to the court to test the order, and is intended to throw the burden of proceeding in court upon them. Thus when an order is made the carrier will have to apply to the court for a writ restraining the operation of the order until its validity is determined; otherwise the penalties may be imposed. Of course, upon suit for the penalty the carrier may there raise the objection that the rate fixed is not reasonable, but there will be so many suits of that character as to compel the carrier to resort to the first process—i. e., go to the courts to test the reasonableness of the order, etc. Again, the courts may finally hold that they must do this, as intimated in the concurring opinion of Justice Harlan in Chicago, Milwaukee and St. Paul Railway Company *v.* Minnesota (134 U. S.), in which this subject is discussed.

The foregoing provisions will (1) confer rate-making power upon the Commission, and (2) will further provide for the adequate and prompt enforcement of orders of the Commission, and those are the matters about which complaint and agitation have gathered.

The following are matters of importance to proper regulation and supervision of interstate transportation, and some of them have close relation to some of the preceding provisions.

7. The law should be so extended as to include interstate water transportation and foreign transportation so far as the Constitution will permit, thus bringing such transportation and the companies engaged therein under the same provisions of law as relate to interstate transportation by railways.

8. The Commission should be given full power to make regulations and to prescribe the terms and conditions of the use of private refrigerator and stock and other cars, or such subject should be covered by some other adequate, definite provision of law.

9. Unfair division of rate with the owners of terminal tracks should be forbidden and full power should be given to fix the rate therefor and to otherwise prescribe the rules governing such division of rates. This or some other provision furnishing adequate remedy for the wrongs and discriminations that now exist with reference to such matters should be adopted. This does not mean that the law as it now is does not reach such subjects, but it does mean that what is here proposed will more directly and effectively reach and control such subjects and prevent unfair practices and discriminations of the kinds named.

10. The entire law upon the subject should be reexamined and modified so as to be consistent throughout, and the law to be adopted should be an act so doing, retaining the desirable features of the present law, with such additions thereto as are necessary to afford adequate regulation and control.

ADDITIONAL STATEMENT OF MR. E. P. BACON.

WASHINGTON, D. C., *May 18, 1905.*

The SENATE COMMITTEE ON INTERSTATE COMMERCE.

GENTLEMEN: I beg leave to correct a statement made by me when before your honorable committee on the 8th instant, that the increase in the aggregate tonnage of the railways of the country during the period of five years ending June 30, 1904, was 10.9 per cent. I find, on referring to the original document from which I derived the data, namely, Senate Document No. 257, Fifty-eighth Congress, second session, that the statement of tonnage and revenue therein contained extends only to the year ending June 30, 1903, and that the computation I made covered only the years from 1900 to 1903, a period of three years instead of five; and I learn that the figures for the year ending June 30, 1904, are not yet available. Hence the comparison I made of the relative increase in tonnage and revenue during the five-year period first mentioned is incorrect, and the data for making the comparison for that priod is not yet obtainable. I have, however, made the computation for the three-year period mentioned, which shows the increase in tonnage to have been 10.9 per cent, as previously stated, and the increase in freight revenue during the same period to have been 25.6 per cent. This shows the increase in revenue during that period to have been 235 per cent greater than the increase in tonnage.

I also desire to submit a communication addressed to me for the information of the committee by Eugene Withers, of Danville, Va., who was appointed, together with Hon. A. M. Aiken, by the common council of that city to appear before the committee to advocate the proposed legislation, in pursuance of which Mr. Aiken appeared on the 8th instant, Mr. Withers being also in attendance but not addressing the committee.

Very respectfully, EDWARD P. BACON.

DANVILLE, VA., *May 16, 1905.*

Mr. E. P. BACON,
Washington, D. C.

MY DEAR SIR: We are interested in this matter particularly because of certain facts. This is not a contest between committees. It is a contest between six citizens and the interests they personally represent and the town of Danville.

Of the six men who came to Washington Wednesday last, J. G. Penn and R. A. Schoolfield are nominal directors of a branch line of the Southern Railway known as the Danville and Western. James I. Pritchett has been for years a director, and is presumably so now, of another branch line of the Southern. Schoolfield, Pritchett, and Penn

are stockholders and directors in a cotton-milling company here, which gets a special rate—that is, it gets a rate accorded to cotton manufacturers, which is much lower than other similar rates to the citizens of Danville. Pritchett is also engaged in the milling business and is a merchant. As a miller he gets a special rate known as the "milling in transit rate," and it is alleged that he gets the same as a merchant. Whatever may be said of the first two rates, it is plain to my mind that if Pritchett gets a special milling in transit rate as a hay, grain, and lime dealer, he and the railroad are both violating the Elkins law. J. R. Jopling is the president of the First National Bank and a director of the Dan River Cotton Mills, another cotton factory which is owned by practically the same men who own the Riverside, and gets exactly the same rates. Jopling's bank has recently gotten the Southern Railway's account. W. P. Boatwright is a furniture manufacturer, with a furniture manufacturer's special rates. He is interested as the others, while W. T. Swann is a member of the board of aldermen and is one of the two in the common council of 30 members, including both bodies, who voted against the resolution to send the committee to Washington. The committee of six went to Washington, it is believed here, at the solicitation and invitation of the Southern Railway Company.

They have been censured and condemned so very severely since their return to Danville that they are demoralized and panic stricken. The council yesterday demanded of them, in substance, to show their hands and say whom they represented and what special rates they got. The citizens and business men generally will hold an immense mass meeting to-night for a similar purpose and the entire town is almost unanimously arrayed against these six men, representing themselves and speaking the sentiments of the Southern Railway.

It is, in addition, important to show that in every fact stated by these gentlemen before the committee they made an error. Their lack of information was pitiful. This delegation of six men affords a conspicuous illustration of manufactured sentiment. They are the recipients of preferential or special rates which have enabled them to prosper. They are, or part of them, directors (in name only) of branch lines of the Southern Railway Company, and are put in those positions for the purpose, so far as possible, of making them look favorably upon the Southern Railway and its acts. They speak not the sentiment of the citizens nor of the public, but of themselves and of the railroad, and they represent nothing beyond their own private interests, and voice no sentiment other than the wish of the railroad. Whether instructed to do this latter or not, they have done it, and they have evidently responded to the Southern Railway's efforts, made through James H. Drake, assistant freight agent, some weeks ago, to get a delegation from Danville to appear before the committee to try to break the force of the petition of the city.

Under these circumstances we are particularly anxious that the Senate committee should know the real sentiment of the town and its citizens, and should know that the men appearing before them and protesting against the Esch-Townsend bill not only are uninformed as to the facts in their own town but do not know what the Esch-

Townsend bill is, and represent nothing but the beneficiaries of special rates and voice no sentiment other than that of the railroad and those whom it chooses to affect.

Respectfully, EUGENE WITHERS.

OFFICE OF THE COMMERCIAL ASSOCIATION,
Danville, Va., May 17, 1905.

Hon. STEPHEN B. ELKINS,
Chairman United States Senate
Committee Interstate Commerce,
Washington, D. C.

DEAR SIR: I have the honor to transmit to you the following resolutions, as passed by a general mass meeting of the city of Danville last evening in the court-house of this city.

I remain, my dear sir, very respectfully, yours,

ALEXANDER HELPER, *Secretary.*

Mr. A. W. Douthat presented the following resolution, which was unanimously adopted:

"*Resolved*, First, that we, the citizens and business men of Danville in mass meeting assembled, disapprove and disclaim the views and sentiments expressed by the six gentlemen who appeared before the Senate Committee on Interstate Commerce on Wednesday, May 10, 1905; that we deny that such views and sentiments in any wise represent the opinions of a vast majority of the business men and citizens of Danville, however well they may express the opinion of the gentlemen who appeared before them, and we declare and insist that their views and sentiments are prejudicial and detrimental to the best interests of the city, and especially to its mercantile and commercial growth and prosperity.

"Second. That we approve and commend the petition and statements presented and made before the Senate Committee on Interstate Commerce on May 8, 1905, by the committee of the city of Danville and Business Men's Association, consisting of Judge A. M. Aiken and the Hon. Eugene Withers, and affirm that in our opinion the allegations in said petition contained are wholly true and the statements accompanying it are in no wise overdrawn, but simply a clear and correct presentation of the freight conditions in Danville and their result on the business of our city.

"Third. That we emphatically ratify and indorse the action of the board of aldermen and common council and of the Commercial Association in appointing a committee to go to Washington to correct the errors and misapprehensions contained in the statements of the said six gentlemen, and to remove any idea that their views and opinions at all reflect the wish or opinion of this city generally as to the Esch-Townsend bill; and we respectfully ask the Committee on Interstate Commerce of the United States Senate to grant a hearing of the committee, that they may make known the real opinion and wishes of the city of Danville and its citizens."

FRIDAY, MAY 19, 1905.

The committee met pursuant to adjournment.

Present: Senators Elkins (chairman), Cullom, Kean, Dolliver, Clapp, Carmack, Newlands, and Foster.

The chairman stated that Senator Foraker would be absent to-day on account of continued illness.

STATEMENT OF CAPT. T. G. BUSH.

Senator KEAN. Please state your name and occupation.

Mr. BUSH. My name is T. G. Bush; my residence is Birmingham, Ala. I am in the iron and coal business, for one thing; I am largely interested in mercantile business, for another, and perhaps the most important matter is that I am a farmer. I do not know but that at some time in the future I may be foolish enough to want to run for some political office, and so it is necessary for me to be a farmer.

Senator KEAN. What is the extent of your business?

Mr. BUSH. My business chiefly is the manufacture of iron.

Senator KEAN. What is the extent of it?

Mr. BUSH. The extent of the business, you mean, in tonnage or shipments?

Senator KEAN. Either tonnage or shipments, just as you care to state.

Mr. BUSH. The total iron is about 200,000 tons manufactured and shipped, and that involves the raising of about 750,000 tons of coal; and out of the coal, of course, we manufacture the coke that enters into the manufacture of iron. My mercantile business is a large wholesale jobbing business in Mobile. My home is in Birmingham, where my headquarters are.

Senator KEAN. How many furnaces have you?

Mr. BUSH. We have three furnaces and one new one under construction—a large modern furnace.

Senator KEAN. What is the location?

Mr. BUSH. The location is really in the Birmingham district, but really not at Birmingham. Two of my furnaces are at Gadsden, Ala., and two are in what is called the Anniston district, just on the Alabama mineral division of the Louisville and Nashville Railroad.

Senator KEAN. Kindly proceed with your statement.

Mr. BUSH. My interest, Mr. Chairman and gentlemen, in this matter, of course, is from the shipper's standpoint, and the relation which should exist between the shippers and the transportation companies.

I assume that this question is one of very great magnitude and concerns all the interests throughout the country. In fact, I think the question of railroad transportation and the question of the tariff are the two most important questions that could be discussed affecting the general business of the country.

I apprehend that there are many misunderstandings as to the real conditions concerning this subject under discussion. I have been in the practical railroad business, and therefore I, perhaps, appreciate the conditions. My interests, however, have always been more those

of a shipper than from the railroad standpoint. My observation has been that many complaints of troubles on the part of the shipper are imaginary and that of all classes of people I know they are probably the most easily prejudiced by small things. Some of these very small affairs in the railroad business tend to make a man antagonistic as regards the whole railroad situation. Sometimes a man will be offended by the conduct of some little station agent and take offense at that and become an enemy of the whole railroad situation.

I remember once, when I was in the legislature of Alabama, a member of that body introduced a bill to compel every railroad company to weigh every bale of cotton received at every station in the State and to deliver that cotton at its destination by weight. Of course, that was absurd and the bill was defeated. But I asked him afterwards why he had introduced such a bill. Well, he said that in his town there was a shipment of two bales of cotton belonging to two different people, both having the same initials; that one was a very small bale and the other a large bale; that they were shipped to Columbus, Ga., I believe, and there, by reason of the fact that both had the same initials, each bale went to the wrong warehouse, and on account of that mistake he thought that all the railroads in the State should be required to perform that service.

You find people who become prejudiced because the railroads do not get their trains at their stations on time. I remember another case in the legislature of Alabama. One man from north Alabama was very aggressive and wanted mandatory powers given to the railroad commission. I asked him afterwards why he talked that way. He said the trains were frequently late at his place and he wanted to have them put under control.

Now, Mr. Chairman, there is another cause for this agitation, which has perhaps even less excuse than these other cases, and that is the use that the average politician makes of prejudices which can be aroused in the people generally against railroads and corporations, and I do not know of many instances in my own State where any candidate for office has not made use of that material for his own benefit. The result is that prejudice is built up among people by them being told that the railroads are in the wrong, when they do not know really whether or not the railroads are in the wrong.

Mr. Chairman, if your physician were to meet you every morning—you seem to be in very fine health—but if he were to meet you every morning and tell you that you were looking badly and should ask you to let him feel your pulse——

Senator KEAN. As this goes into the record, I want you to understand that I have no physician.

Mr. BUSH. Well, we will imagine some other healthy man whose physician tells him these things every morning. How many days would it be before that man would really think he was sick? So you see how easy it is to work upon the prejudices and feelings of the people in that way.

I have always found that the interests of the transportation companies and the shippers are mutual practically all along the line. I find, in my experience as a railroad man, first, and then in my business and associations with them, that the managers of railroads, as a rule, are ambitious to succeed, and they can only succeed by the

good will of their patrons. The interest that people manifest sometimes in favor of the railroads is very great, according to the standpoint from which they look at it. For instance, you never knew of a new railroad being built into a new section of the country to be developed but what the people were greatly interested in it, and in many cases were willing to make donations. It is all very fine until they get the road; then, when they get it, perhaps they turn against it.

I have often thought about the great stress laid upon the right of railroads to condemn rights of way. The more I have thought about that the more I have concluded that the law was not enacted for the purpose of helping the railroad man to inaugurate something out of which he could make money, but it was to furnish facilities for the people who live in the country. You can readily understand, if there was no law enabling a railroad company to condemn a right of way, how one selfish man could make thousands of people suffer for the lack of those conveniences.

I mention these facts because I think we ought to look impartially into this question, which I shall endeavor to do, and which I have always endeavored to do.

There is another thing in regard to the attitude of the shippers, and it is this: You may say what you please about the average business shrewdness of the people throughout the country, but they are sometimes too shrewd to put their money into railroads. I do not know of any case, except away back in railroad history many years ago, where people made contributions or took stock in railroads. You find it is not a general thing in any section of the country to put money into railroad securities as an investment, because railroad securities do not bear large enough interest to meet their requirements or their wishes. Of course in that section of the country where money is more plentiful and where people are satisfied with lower rates of interest, then those securities become valuable as investment securities, and in that way they are scattered all over the country.

Senator KEAN. Now, Captain, will you kindly tell us what you think of the proposed legislation—how it would affect you, in what particulars?

Mr. BUSH. My objection to the proposed law giving the power to the Commission to fix rates is that it will, in my judgment, cause great confusion in the business of the country. Perhaps no one appreciates how this traffic business has been built up from a small thing to a very great thing, how intricate it is, and how delicate a question it is to adjust rates and differences to meet the commercial conditions which exist all over the country.

Senator KEAN. You are a very large shipper of iron and other commodities, and have to deal with the railroads in arranging rates?

Mr. BUSH. Yes. I would not want to have anybody else fix that rate for me.

Senator KEAN. How extensively do you distribute your product over the country?

Mr. BUSH. From Massachusetts to California. There is scarcely a road or a line that reaches out of Alabama, with all of its ramifications and connections toward the West, the Middle West, and the East, that we do not have business with, and we are concerned and interested in all those roads.

Senator KEAN. You find the railroads are generally willing to give you reasonable rates?

Mr. BUSH. Surely. I would like to make this statement—it only applies to the railroads in our section of the country. You understand that we have systems in the South—the Louisville and Nashville, the Atlantic Coast Line, the Southern, the Frisco Line, the Illinois Central, the Seaboard Air Line, the Central of Georgia, and some others. I can recall the time when the district in which I live, which now fixes the price of iron for the world and also the price of steel, had practically no development in the mineral lines, and it was not a great many years ago when the lands in that section of the country were selling at from $1.25 to $2.50 an acre. Then the railroads were constructed in there, and then began this development. The necessities on the part of the railroad companies were so great to build up this business that I know that, in one instance particularly, large sums were advanced to aid in building furnaces, rolling mills, etc. When this business began to grow, of course there was no large home market for the iron in Alabama or in that section, and therefore it had to seek markets beyond the Ohio River and north of the Potomac, and it became absolutely necessary for those roads to fix rates that met the commercial conditions—that is, to put that iron into the northern markets to meet competition in those markets. So that that adjustment is going on all the time, and at times the railroad companies are called upon to make emergency rates that are absolutely necessary to keep the furnaces going. When times are good the shippers are quite willing to advance rates. Taking the whole country, the Northwest particularly, there is no question between the shippers and the railroad companies; in fact, they work very harmoniously together.

I would like now, just in a few words, to call attention to the effect of that development, in order to show that the present conditions are not burdensome, and that wonderful progress and development have taken place under these conditions. For instance, it is an admitted fact that there has been a great decrease in the per ton mile rate for the last twenty years, and of course there are various reasons why the railroad companies could afford that decrease, from the point of having practiced better economy in the conduct of their railroad operations, and then, again, from the necessities of the case.

Take, if you choose, the whole country, though I want to refer more particularly to the section I am more familiar with.

Figures for the South.

	1880.	1905 (estimated).	Increase in 25 years.
			Per cent.
Railroad ..... miles..	20,000	70,000	250
Cotton ..... bales..	5,799,000	a 13,584,000	140
Cotton ..... spindles..	600,000	8,250,000	1,275
Coal ..... tons.	6,527 000	77,500,000	1,150
Pig iron ..... do....	307,000	3,300 000	720
Value of lumber products	$39,000,000	$200,000 000	440
Value of agricultural products of the South	$900,000,000	$2,000,000,000	200
Capital invested in manufactures	$257,000,000	$1,500,000,000	840
Exports	$250,000,000	$500,000,000	100

a 1904 crop.

Assessed value of the property in the South has increased from $4,500,000,000 in 1890 to $6,500,000,000 at the present time, or an increase of nearly 50 per cent in fifteen years.

I mention these facts to show what has been the result of the expansion and extension of the railroads, because they have been the chief factors in bringing it about. I mention it also because they have to furnish the rates that bring the product to the markets.

Senator KEAN. You think that under existing conditions the South has prospered?

Mr. BUSH. The South has prospered very much indeed; and I think, Mr. Chairman, that there is really less complaint in regard to the railroad question, based upon fact, than anywhere, comparatively. I know there is far more complaint about the tariff all over the country than about the railroads. Yet I think the most dangerous thing to-day would be to appoint five men and give them power to fix the tariff for this country. That would bring us into a state of chaos in six months that we would not get out of in ten years.

You remember the effect of the Wilson bill on the country. I remember I came here and pleaded before Mr. Wilson's committee against the passage of that bill and prophesied just what has happened. It was not so much because of the real effect as the effect upon people's minds. The industries have been built up under the tariff provisions, and it probably did not matter whether the condition thirty years ago was right or wrong, it existed. The Government had invited people to go into manufacturing and offered these inducements, and to make any violent change was a great injustice to them.

Correspondingly the railroad interests have built up, so that they have 300,000 miles of road and more. I suppose very few people anticipated that the time would ever come when the Government would take charge of these properties and operate them, and the people would have been slow about putting their money into them if they had thought the Government would ever take possession of them. I know I should not like to have the Government say to me: "I am going to fix the maximum prices for the iron business." It is true that one is a public utility and the other is not, but it is money belonging to the people that goes into both.

I have no interest in railroads—I believe I have a few shares of stock in one road that never paid a dividend; but outside of that I have no money interest in the world in them, and I can say from a selfish standpoint that the shippers and the men engaged in business under certain conditions could not afford to see the transportation business of this country put into the hands of a few men, I don't care who they are, to fix rates arbitrarily and say what shall prevail. If you have ever been familiar with railroad business you would know that it is very difficult to find enough intelligent and skilled men to attend to the traffic department of the railway business satisfactorily. As I understand, this bill proposes to make the Interstate Commerce Commission a traffic department for the whole United States and to undertake to adjust these rates to commercial conditions that exist all over the country. An angel could not do that. There is no human power can do that, situated as these men would be, without the training and without knowledge of the conditions that exist everywhere.

Senator KEAN. And you do not think that if the Commission had this power given to them to fix a rate that was found to be unjust and unreasonable that would satisfy all of the complaints of the people?

Mr. BUSH. Not by any means. You would simply multiply them a thousand fold.

Senator KEAN. They would then think of something else they wanted?

Mr. BUSH. You might travel all over the country and you would find very few people who would say the rates are too high, but they will all say that they ought to be less. The real problem that the railroad companies have to solve to-day is the adjustment of rates and to avoid what might be called unjust discrimination in rates. You are compelled to have what appear to be discriminations. For instance, I have had some experience as a business man. I am doing business in a certain particular territory, and have a line of business that will make me a reasonable and legitimate profit, but I want to increase the volume of my business, and so I go out with a lot of invitations to sell my goods to everybody for less than the usual price in order to increase my volume of business. You find the railroad companies have conditions to meet like this. Take the South, for instance. There are thousands of cars that have to come down empty and take back lumber, for instance, going to the West. Thousands of cars come down there loaded with merchandise and have to go back empty. That sort of adjustment is going on all the time. So the railroad company thinks it had better make some change in its rates to meet these conditions rather than be hauling empty cars. Those are matters that we can not fix arbitrarily. Nobody is harmed when they just think of the conditions. We have complaints in our own State because the railroads haul goods from somewhere else at a lower rate. Goods come into the country by coming around to the coast from the North, and when they get there they meet water competition. I can remember very well when goods were brought to Mobile from the North through the Gulf, and the railroads had to adjust their rates according to that water competition. It has only been a few years ago that schooners and other vessels for water transportation fixed the rate from New York, Philadelphia, and Baltimore to Mobile. Take the interior points; take Montgomery and Birmingham. There is a combination of rail and water rates from New York and the East that fixes the railroad rates so that you can not change them to meet other conditions.

Senator KEAN. This is a very interesting statement of yours. If these rates were disturbed, do you think that would have any effect on the schedule of wages?

Mr. BUSH. Surely, Mr. Chairman; I will give an illustration from my own business on that point. In the coal business in my State the ordinary scale of wages is a sliding scale governed by the prices of iron, certain prices for coal, and so on, toward a maximum and minimum agreed upon. The moment that the iron companies make less money and the prices of iron come down, immediately they have to reduce wages. The railroad companies, as you very well know, employ, I suppose, about 1,300,000 or 1,400,000 people, and of course that means five or six million people to be supported. But it does

not end there, for this reason: The most important factors to the iron and steel business are the buyers, and the best buyers are the railroad companies. The railroad companies of this country, as a whole, consume about one-third or more of the iron and steel produced. So you can see how many millions of people that affects when all these ramifications of business are considered and the intimate relations in every section of the country between the coal business, the iron business, and the railroad business.

Our great stagnation in the iron and steel business in 1904 was due to the inability of the railroad companies to sell securities in order to raise money to make extensive improvements. They came to a standstill, and so the iron business came to a standstill. I feel this way, that the railroad companies, if they are allowed to charge a reasonable rate, can furnish increased facilities.

Senator KEAN. And you find that they do charge reasonable rates?

Mr. BUSH. That is my experience.

Senator KEAN. Have you had any differences with them?

Mr. BUSH. Some small ones sometimes.

Senator KEAN. How have you settled them?

Mr. BUSH. Always amicably. We can not always do that, but there has been nothing worthy of mention at all.

I want to call attention to one fact that is so vital to the iron and coal interests in regard to these facilities. You probably know that up to this time the history of the iron trade has shown that it has doubled about every ten years. The coal business has increased to about 370,000,000 tons from almost nothing many years ago. You will find that if this increase goes on in ten years the demand will be for 40,000,000 tons of iron in this country, and the tonnage would increase probably 80 per cent.

The transportation facilities are necessary to meet those requirements. I feel that if the railroad companies, or any other public utility that has to meet the demands of the people, are not able to meet these requirements we will have inconvenience and loss. The truth of it, Mr. Chairman, is I don't think there are many people who know how big this country is, the immensity of it, its resources, and its rapid development. Then to talk about a few men comprehending the situation from the transportation standpoint, when there are 300,000 miles to serve from Maine to California, is to me an absurdity.

Senator KEAN. Your statement is very interesting.

Mr. BUSH. Understand me, I do not mean any reflection upon the men who compose the Commission at this time or who may hereafter compose it. Every sensible man must know his own limitations. I think the worst thing that could happen those gentlemen, and from which they would pray the most fervently to be delivered, is from entering upon responsibilities of that kind, because they would simply be staggering.

Then there is another thing. You can readily see that one thing leads on to another. You may say, "Oh, well, they will fix a rate here and there." That means that if they have the power to fix a rate they will do it, whether the rate is wanted or not. The people will demand rates, and they will have to meet the requirements.

Not long ago one of the members of the Georgia State commission was talking with me, and I asked him how often the commission met. He said, "We meet as often as it is necessary, but," he said, "the people are not satisfied, and want us to meet oftener and do more." We have a contest going on now in our State where the chairman of the commission wants the Alabama legislature to adopt by the wholesale the Georgia rates, to apply every condition in Georgia to every condition in Alabama; you can see what trouble that brings. As soon as you tell people, "Here is a great wrong being done, and something ought to be done to remedy that wrong," why, of course the people will want that remedy. You know, Mr. Chairman, that any little concession the railroad could make would not satisfy them; it would all disappear in going down the line to the consumer.

It reminds me a little of a story that I heard once by a minister. It seemed he was trying to raise funds in a Hardshell Baptist country for missions. He thought he had made a very fine speech, and the Hardshell minister, who was presiding, got up and said, "That reminds me of the man who wanted to move a barrel of tar from one point to another. He had the barrel of tar at one end of the line and placed an empty barrel at the other end, and then stationed a whole lot of men with gourds between. One would dip with the gourd out of the first barrel and pour it into the gourd of the next man, and so on, until it got to the empty barrel. But when they had got the first barrel emptied there was no tar in the other barrel; it had all stuck to the gourds."

So if the railroads should undertake to make a reduction of rates I am afraid the consumer would never feel the effect of it, because before the effects of the reduction got to him there would not be enough left to divide.

Senator KEAN. Captain, there are a number of other gentlemen who would like to be heard. Have you finished your statement?

Mr. BUSH. I want to say this, Mr. Chairman: This question is so important that I think our legislators in Washington can afford to act wisely about it, because if, after the discriminations are remedied and after the rebates are ended, then if that does not solve the problem you can tackle it in some other way. But Congress will be here when you and I are gone, and there will be other Presidents to look after this matter if our distinguished President now does not get what he would like to have. So that we can afford to be conservative in undoing a wrong, because otherwise it is much worse than to leave it alone. My friend John Allen once declared that he would not run for office again, but he said, "The last day of my time is time enough to say that." So the last day is time enough to enter upon something that is apparently so radical that it might do great harm to all the business interests of the country.

I would like to say, in addition, for the benefit of my railroad friends, that one of the chief causes of friction, in a small way, between the shippers and the railroad companies is the method now prevailing with the railroad companies for adjusting claims. The delay in doing that, I think, has caused more trouble than many other things combined. I think that is something they have not improved upon, and that ought to be done.

Senator FOSTER. I was somewhat interested in your statement, and I would like to ask you this question: In your judgment, is it possible for the Government to select men of competency and ability who would fairly, honestly, and intelligently establish freight rates?

Mr. BUSH. No, sir; I do not think so.

Senator FOSTER. You think, then, it is impossible for the Government to select a body of men of such character?

Mr. BUSH. I do, because I think, Senator, if the Government were to select five of the most experienced and wisest traffic men in this country to take care of that whole situation it would involve too much work for them to accomplish. You know the Government is not likely to select railroad traffic men for that place.

Senator FOSTER. Why not?

Mr. BUSH. Well, simply because the supposition would be that they would be biased in favor of the railroad companies if they had been in their employ. Not that they would be biased, but I am judging by past experience in selecting men, both for National and State commissions. No railroad man, so far as I know, has ever been put on a State commission in the South.

From 1890 to 1904 the railroad mileage of this country increased from 210,000 to 300,000 miles, including sidings. We may expect an increase of population of 15,000,000 in the next ten years compared with 1890. We have an increase in agricultural products of more than $2,000,000,000 in ten years, and of mining and manufactured products of $5,000,000,000. Ten years ago agricultural values were $3,000,000,000, now $5,000,000,000. Mining and manufactured values were $10,000,000,000, now $15,000,000,000. These two interests are now $7,000,000,000 more per annum than in 1890. What great factor chiefly brought about this marvelous increase? Unquestionably the extension and expansion of the railroads. New mileage of railroads will unquestionably become necessary. The same is true as to new equipment.

	1890.	1904.
Locomotives or engines	31,062	44,529
Freight cars	1,090,164	1,524,150
Passenger cars	23,465	28,646

The total mileage tons in 1890 were 16,604,012,396; in 1894, 171,290,310,685, or about two and one-half times that of 1890. The increased number of locomotives and cars for the ten years was about 40 per cent; increased volume of freight, 153 per cent. From 1897 to 1904 the increase in seven years would give 300,000,000,000 mileage tons against 170,000,000,000 mileage tons as now exists, which would require nearly double the carrying capacity to move the additional tonnage. The output of bituminous coal is now about 250,000,000 tons. In ten years it will likely grow to 500,000,000 or more. The present output of iron is 20,000,000 tons per year. In ten years it will likely increase to 40,000,000. How will the transportation companies be able to provide the equipment to move this tonnage if they are not permitted to manage their business and obtain a reasonable profit? If

the railroad companies are not prosperous, they can neither sell their securities for improvements nor provide for them out of their current revenue.

According to my experience, one of the chief causes of friction or dissatisfaction on the part of the shipper is the present method of the railroad companies for adjusting claims. This could be improved upon, and I think it should be. There would be much better feeling between the shippers and the railroad companies as a whole.

STATEMENT OF MR. WILLIAM S. PILLING.

Senator KEAN. Please state your residence and occupation.

Mr. PILLING. I reside in Philadelphia, and I am in the iron and steel business.

Senator KEAN. Please state the extent of your business.

Mr. PILLING. I am a member of the firm of Pilling & Crane; our principal business is in iron ores, coke, soft coal, pig iron, and cement. We act as selling agents for three large mining companies in the East, several of the large Lake Superior mines, and for some foreign mines in Nova Scotia, Sweden, and the Mediterranean countries. We are also sales agents for five blast-furnace plants, all in the East, and sales agents for a large cement company. Our business, under normal conditions of activity, amounts to about 1,500,000 tons of iron ore. We sell over 1,000 tons per day of pig iron, about 500,000 tons of coal and coke, and 3,000 barrels per day of cement. We have large financial interests in many of the companies we represent. In some cases we are the executive officers of them.

Senator KEAN. How extensively do you ship over the country?

Mr. PILLING. How extensively in tonnage?

Senator KEAN. No; in distribution.

Mr. PILLING. Our business is principally in the East; we have offices in Pittsburg, Philadelphia, New York, and Boston. The products we ship do not usually stand very long transportation; they are more what you might call materials to be disposed of in the local markets.

Prior to 1890 I was treasurer and executive officer of a large iron company. Since then I have been in business with my partner. Prior to 1870 most of the pig iron was made in the East; there were a few furnaces in New Jersey, a few in eastern New York, and most of them in eastern Pennsylvania. Anthracite fuel was used, and there were charcoal furances in all parts of the country—New England, the Middle States, and the South.

Senator KEAN. How many blast furnases are left in the Lehigh Valley?

Mr. PILLING. I should say 20 or 25.

Senator KEAN. Are there as many as that left there in blast?

Mr. PILLING. Yes, sir.

Senator KEAN. I thought it was the fact that all that business had passed away from the Lehigh Valley.

Mr. PILLING. No. I was going to say it reached a point where it declined on account of the development of other sections. About 1870 the development of Lake Superior iron ore increased, and the

conditions in regard to coking coals in the Connellsville district brought about a tremendous development in the Central West, western Pennsylvania, Ohio, and the Wheeling district. Then that development extended farther west, to Illinois and adjacent States. Then Virginia became a large factor, and that was followed by a very large development in Alabama and Tennessee. The last great development has been in western New York—what we call the Buffalo district. Iron is produced practically in all sections of the United States, but principally in the districts I have mentioned. Colorado is quite an important field also. The successive development of these various sections brought about competition between the different districts, each one seeming to have some advantage over the other. One had cheap fuel; one or more had cheap ores; some had both. The eastern section, in which I am most interested, had no special advantages, except that they were naturally assembling points, largely due to the fact that business had been done there in prior years and the men were still there and understood the business. Lately New Jersey has become a great producing field—the northern part of New Jersey.

Senator KEAN. That is the one in Mr. Wharton's place?

Mr. PILLING. Yes, sir. There is one at Peak Crest and one at Phillipsburg, and Oxford is about being rebuilt and will be a factor again. Then there is a spiegel furnace building in New Jersey.

Senator KEAN. Please tell us in regard to freight rates on shipments of those ores, rather than as to the manufacturing. We are inquiring upon the question whether we should give to the Interstate Commerce Commission additional powers in regard to control over railroads and rates, and we would like to know whether you, in your business experience, have found it difficult to arrange with railroads as to rates, whether you found the rates to be reasonable, or whether you have had complaints to make, or have heard complaints as to the treatment by the railroads of their patrons.

Mr. PILLING. In former years we had great cause for complaint. We could hardly go into any large business without getting special rates. We also knew or suspected that every competitor had private rebates, which we seemed to be unable to get unless we discovered that our competitors were getting them. We also knew that there was discrimination in regard to car supply, and that, especially in my operations, was very serious. We have reason to believe, and are satisfied ourselves, that these abuses have all been corrected.

Senator KEAN. That is, you know of no rebates being given at present?

Mr. PILLING. I know of no rebates being given in that shape.

Senator KEAN. How about discriminations?

Mr. PILLING. And no discriminations. There is still considerable complaint about local rates on what is known as "short hauls," but those are taken up separately for each particular case.

The whole freight situation in the iron business is now very complex, owing to the great number of districts in which iron is made under varying conditions. The great menace that I see in any central power fixing these rates would be that, through lack of understanding of the conditions, they might fix a rate to suit one section which would be a great injustice to another, and before the other sections

could present their cases and have them corrected they might be in the hands of the sheriff. Also, the lowering of rates in one section would be equivalent to the advance of rates in another. It has been demonstrated that in times of great depression of the iron business in a canal district the iron can now go out of the other districts. It is a case of the survival of the fittest as regards each section. The concern which has the best plant and the best management will live and the others drop out. In times of prosperity all prosper about alike. There has been a general equilibrium established among the different districts, and we should consider it a very serious problem to attempt to take up detailed rates which might affect one section in New Jersey as compared with another.

We also have in mind the fact, without imputing philanthropy to the railroads, that they are interested in building up these industries. The iron trade has prospered wonderfully. From a million tons in 1860 it has gone up to 24,000,000 tons now. Every ton of pig iron means 3 or 4 tons of raw material, so that the tonnage handled by the different railroads to-day in pig iron is over 100,000,000 tons.

We also know that the railroads are great customers in the iron business. The iron trade never prospers unless the railroads are large buyers. Anything that would halt their development or expansion would certainly reflect upon the iron trade and bring about great depression, and when the iron trade is touched all other trades suffer with it.

Senator KEAN. Then you think the existing conditions can be safely left as they are?

Mr. PILLING. We very much prefer leaving them as they are. The railroad officials thoroughly understand the situation.

If a commission could be appointed and devote all its time to the iron trade alone I think it would take all of its time to make an intelligent study of the situation and learn all about it, so that they could decide questions constantly arising. But if one section should, by some act of this Commission, be placed at a disadvantage, with the great amount of business before the Commission, that case might not be heard in time to save the perpetration of a very great wrong.

STATEMENT OF MR. ROBERT M. LESLIE.

Senator KEAN. Please state your residence and business.

Mr. LESLIE. Philadelphia; I am a manufacturer of Portland cement, and also jobber and dealer in cement generally.

Senator KEAN. Please state the extent of your business.

Mr. LESLIE. I have been in the cement business since 1874, as an importer and dealer, and of late years as a manufacturer of Portland cement.

Senator KEAN. Where?

Mr. LESLIE. At a number of works in Pennsylvania, New York, and elsewhere.

Senator KEAN. Not any in New Jersey?

Mr. LESLIE. We quit on the Pennsylvania side, thinking at first we would establish it on the line of railroads. We have works now in New Jersey. I knew it was a good thing. The cement business is

one that runs in certain parallel lines with iron interests, because it requires a great deal of material to be assembled in order that there shall be a certain amount of material outbound. It resembles coal, however, in the sense that the freight rate is in many cases equivalent to the cost of the material at the mill. So that it is essentially an industry that goes to the question of the regulation of freight rates. Our own business represents some of the largest cement works.

Senator KEAN. What is the tonnage?

Mr. LESLIE. The outbound tonnage is about 500,000. We are also large jobbers, to the extent of 50,000 tons more.

As to the question of duty on cement, I have appeared before every committee since 1883, when was enacted the original tariff, in order to try to keep the rate of duty on cement stable and uniform. I was fortunate in doing that through the consideration of the Wilson bill, the Mills bill, and every other bill. In appearing here I speak not for the industry, but simply as a volunteer witness for myself. I feel just the same sentiment about it, that we should try to keep the rate situation, which represents half the cost of this material when it reaches the consumer, just as stable as we were able to keep the tariff on this commodity for all these years.

When the question first came up as to the tariff on cement I had an output probably of 100,000 barrels. That was in 1885–86. To-day that industry represents nearly 30,000,000 bushels. That great increase has been due to the stability of the conditions that governed the manufacture of Portland cement in this country. Yet the tariff was a perfectly insignificant one—hardly 20 per cent—but with that small duty this great industry grew.

My feeling is, as the duty affected the cost or the selling price of our commodity, so the freight rate, which is the other half of what this commodity costs the consumer, is equally important and vital to this industry. The only thing that industry does not want is a series of freight rates that will resemble a patchwork quilt. In other words, the very minute that any individual or body of commissioners begins to discuss what foreign rates from San Francisco inbound should be, with a water rate from Europe to central points in California, and then discuss what the rate should be from New York inbound for the same number of miles, they will get into such serious complications that there will be no relative values in brands. The rates are governed in these cases to the consumer by the fact that at one point Portland cement comes in free as ballast and in the other case it pays duty. So that these rates which represent the cost to the consumer would be absolutely different under identical circumstances in different sections of the country.

The point I make is that in our own industry, as well as in the iron and steel and all the great industries of the country, the day of the expert has come. We are no longer business men; we are professional men. We are just as much professional men in these great industries as the president of a railroad is a professional man, or a doctor and a lawyer are professional men. The day of the amateur is gone; he can not live. The amateur manufacturer or merchant can no longer live. It is really more vital than the fixing of tariffs on fruits, which affect the prices to the consumer. It is a very serious question, the appointment of a commission to fix rates. Highly

educated they may be, but they are not trained for this business, and in a measure answer the title "amateur."

Senator KEAN. Do you find the rates reasonable at present?

Mr. LESLIE. I have never seen the time in my experience, since the passage of the Elkins law and the prohibition of rebates, when I have not felt that we always had a good, square deal, a fair rate, and the best the railroads could give under the circumstances. I have had the handling of large volumes of inbound cement from Europe, but I want to emphasize the absolute importance of experts handling this business. Take the Hudson River, where the cement will come into New York by water. It will compete in that market at certain times of the year with cement from the Lehigh or New Jersey districts. When the Hudson freezes, an expert freight agent and an expert shipper would likely agree that in the winter time, when the business was noncompetitive by reason of the canals being frozen, in that case the railroads should get a little more on the freight rate. In other words, all this freight making is a shipping condition in each part of the country and requires the greatest expert knowledge on the part of the man making the rates as to the conditions governing.

Senator CARMACK. Your point is that as soon as a cold spell of weather comes and stops competition the railroads should be allowed to put up rates?

Mr. LESLIE. No; my idea is this: That in order to get certain materials into certain sections of the country, which probably under ordinary conditions might not come in that section, which makes a competition in that section between various manufacturing centers, then, in that case, the railroad makes an extremely low rate to get goods from its section of the country into that market, adding to the competition of these great world markets like New York and Boston. Then when the conditions under which that competition has been promoted cease, the reason for that extremely low rate ceases, and it seems a fair proposition that when the railroads have transported it at less than the average per ton per mile rate, the water transportation having ceased by reason of natural conditions, then the railroads should have some opportunity to get back. That is my view.

Senator CARMACK. Do you not think that is one plan of fixing rates which would be very disturbing, when the rates would depend greatly on the weather?

Mr. LESLIE. No; because the weather on the Hudson River is a fixed fact, and in different sections there are different fixed facts governing conditions.

Senator CARMACK. If it should happen to be a very warm winter, that would affect the rates differently from the conditions existing in very cold weather.

Mr. LESLIE. It would be fixed at about the time that navigation closes. This market is one that is naturally tributary to the Hudson district. If the Hudson district alone were allowed to come into New York City, the prices of cement would advance very largely. But from the fact that Lehigh cements and some Maryland cements are allowed to come in by reason of extremely low rates, the consumer in the New York market gets, during the building season, which is the summer season, rates on cement that have never been made anywhere in the world.

STATEMENT OF MR. CHARLES A. PAINTER.

Senator KEAN. Please state your residence and occupation.

Mr. PAINTER. My residence is Pittsburg. I am now a broker. I have been engaged in iron and steel and cotton-tie manufacture. I was raised in the iron and steel business, making hoop iron and cotton ties. Cotton ties are an article that depends a great deal on railroad rates. I have had the pleasure of meeting nearly all the traffic managers of the railroads of the country, and in all my sixteen years of experience I have found them a most agreeable and intelligent set of men to deal with.

I can not help but feel that if the Government, by a commission, undertakes the duties now being performed by these intelligent railroad men from Maine to California, they will find themselves in a very short time in a terrible mess. The different industries that have grown up in the United States would suffer terribly while they were attempting to adjust some of the visionary differences and troubles that always arise, no matter how perfect freight rates may be. The laws of the United States, as they stand now, if well enforced, I think, will bring about better results than further extending the powers of the Commission.

STATEMENT OF MR. ROBERT GATES.

Senator KEAN. Please state your residence, and whom you represent.

Mr. GATES. I am from Tennessee. I represent the industrial immigration department of the Louisville and Nashville Railroad.

Senator KEAN. Please proceed with your statement, and kindly make it as brief as possible.

Mr. GATES. I could postpone my statement until a more favorable time, if desired.

Senator KEAN. There is only just so much time, anyway. So please proceed.

Mr. GATES. Mr. Chairman, I am so little accustomed, of late years, to speaking and thinking on my feet before an audience, that I have concluded to put the remarks I want to submit in writing, and will do the best I can to present them.

In considering legislation it is well to bear in mind that laws have their limitations, be they ever so wise. Law can not absolutely cure or prevent. The inherent evils of human relations are minimized or aggravated as laws are wise or unwise. The real effect of law, therefore, is to restrain or encourage.

In the matter of the complicated interests involved in the proposed legislation with reference to transportation rates, the fact of the inadequacy of law to absolutely prevent or relieve should be recognized. In this case it is strikingly manifest, for it would be difficult to strengthen the law as it is along the lines of prevention or cure. It would seem, therefore, that the failure to minimize existing evils is due, not to the laws, but to their nonenforcement or absence of vigorous efforts at enforcement. This has been so clearly developed in

the discussion before this committee that it would be useless repetition to say more. I am content to simply and modestly exhort the Government to aggressive diligence in enforcing the law against secret rebates and rate cutting. Strenuousity on this line is the demand of the situation, not laws conferring impracticable and dangerous powers on an extra-constitutional body. Criminal railroads and criminal trusts, criminal corporations and individuals as well, should be made to drink to the dregs the bitter cup of violated law and outraged public interest.

But it is proposed to turn away from this simple course, which requires only that the ample machinery of the Government shall be put in force against the violators of the law, and enter upon the devious, the tangled, and dangerous path of rate making by a commission of five or seven men. To the ordinary mind it is difficult to discover any relation between rate making and secret rebates; how shifting the power to make rates will prevent secret violations of the same. It seems clear that the Commission, if given the power to make rates, will find itself where it is now—dependent on the enforcement of the law, as it is now. Of course, it is not contemplated that the Commission in fixing rates will adopt the policy of making them so low that a profit will be doubtful, and thus secret rebates and cutting impracticable, for such a policy would make one of two equally disastrous results inevitable—that is, impairment of service, with consequent injury to the business interests generally, or bankruptcy, with only possible relief in the courts. Besides, a policy that would punish the many innocent in order to reach the few guilty is repugnant to the American sense of justice, and would be violative of both the moral and divine law.

I am aware that it is claimed that under the proposed legislation the Commission would not make all the rates of the country, but would only change rates already made which are found to be unreasonable, such changes to go into effect at once. The practical effect would be that when one rate is changed it means that numerous other rates related to such rate must be changed—in other words, a readjustment of all rates in regard to that particular commodity and that particular locality, and ad infinitum. Hence, general rate-making power would be practically conferred, and with it all the evil probabilities mentioned. So that the issue comes back again to that of enforcing the law against secret rebates and secret cutting or the alternative of radical action by the Commission, with impairment of service and consequent injury to business or bankruptcy, one or the other.

But with secret rebates and rate cutting aside, which the law is ample to deal with if vigorously enforced in so far as the same is possible, what else remains as the basis of the demand that the Interstate Commerce Commission be given power over rates? *There are private tracks and cars.* As to these there seems to be disagreement by the forces demanding further legislation. But if there be evils in this connection not reached by the law as it is, would it not be better to enact special legislation with regard to this special subject? It is not necessary to adopt revolutionary methods covering the whole field of transportation in order to reach this specific and comparatively small evil, if it be an evil.

What else remains? "The body of comparatively small complaints," which have been abnormally developed by agitation and, may I not add, solicitation?

It will be found on close examination that the "body of complaints" as to rates comes up from interests and organizations throughout the country that have given little or no study to the question beyond the local or special interest they would serve, or the real or fancied grievance they happen to cherish, and even most of these have been worked up by this agitation. If these local and special grievances and interests could be made public, they would be found to contain many of the elements of inconsistency and antagonism, and would afford in themselves the strongest argument against the policy which they support. An analysis of these motives will show that they rest largely upon personal or corporate grievances—often imaginary or impracticable—or some rate denied or demanded; some advantage asked; some overcharge growing out of classification or some delay growing out of differences between railroad agents at different points; some irregularity in billing; or where some interior point challenges the rates given a waterways city; or where conditions growing out of natural resources give one city advantages over one less favored or less enterprising; or where the railroads have withdrawn from middlemen the right to route staple products that go in bulk; or chronic kicking against rates of every character and on general principles. So that, excepting the motives growing out of community rivalry and the advantages enjoyed by a class of middlemen who deal with fast freight lines, the body of motives behind the movement to confer rate-making power on the Interstate Commerce Commission is inspired by occasional personal and corporate grievances which are small in themselves and self-adjusting. As for the aggrieved middlemen, the Commission will hardly restore a system—that of routing—which would open the door to that evil.

The complications growing out of community rivalry are numerous and embarrassing, no doubt, but, if I mistake not, the Commission has laid down a rule which recognizes natural advantages other than waterways, which, it seems to me, is sound in economics, because it encourages development and promotes the general prosperity. The railroads seldom, if ever, go beyond these well-defined lines of development, and the courts have thus far in the main sustained them.

The "body of motives," based on the general run of grievances, may well be left to the sober second thought of the aggrieved and to the railroads, and if this were established relations between shipper and carrier would be greatly improved and the general interest advanced. But how is shifting the responsibility to lessen this class of grievances? How are the chronic kickers to be lessened or appeased? How are the thousand and more communities, with their exaggerated notions of their own importance and possibilities, to be satisfied? Until each community can have what it demands, which, as a rule, increases with compliance, and each shipper can name his own rates, there will be complaints. Of course, this is impossible; but what does a community inflated with its own consequence, or a shipper circumscribed by his limited view and dominated by self-interest, know or care about relationary interests or the practicable

when dealing with railroad rates? What is wanted, or imagined, it matters little which, is wanted, and that's all there is to it; and if not obtained there will be complaints. The magnitude of this phase of the question swells before us as we contemplate the 200,000 miles of railroad embraced in the sum; the climates and products included; the vast and varied interests involved; the complications and conflicts existing and growing. It is an impossible task for any body of five or seven men; and if the Interstate Commerce Commission is given this power I incline to the opinion that ere many weeks or months it will wish it had never been born, or it will demand more power and an army of assistants, with millions appropriated in the name of the people, who will bear the burden of the experiment. The latter course is more likely, perhaps; for experience, without the shadow of turning, impels the conviction that the Commission will wield all the power granted and cry for more, until the vital power of railroad management is in their hands and the most gigantic national and international political machine in the world perfected.

Is the country prepared for this? Will any city, section, or interest be benefited permanently by this radical change? But granting, for the sake of argument, that an effective system under Commission dictation may be ultimately established, is it not well to consider the injuries, thick as leaves in autumn, that must be inflicted in the process of evolution from the present system, the growth of decades, to the commission system, which no interest will escape? In this connection, and as light on the subject of possibilities, let us glance a moment at some of the States.

It seems to be the policy of some of the State railroad commissions to so manipulate intrastate rates as to give the wholesale merchants and certain kinds of manufacturers in their respective States a monopoly of the business of the State, shutting out or placing at a disadvantage the merchants and manufacturers of other States. It would seem that they are abetted in this more or less by local merchants and manufacturers. We may imagine the state of things that would result if this policy should become general, the practical monopolies created within the States, and the spirit of retaliation that would result, the conflicts with the Federal Government, and the position the Interstate Commerce Commission would be in, especially should it be clothed with rate-making power. And yet, this seems to be the policy of some of the State commissions, which others are endeavoring to have adopted. It is open war on interstate commerce. It would, or will, if persisted in, create monopolies with a vengeance. It would so confuse the situation that chaos would be order in comparison. Now, the condition of the railroad interest may be imagined if to State control is added Federal control, and to State selfishness and manipulation is added sectional selfishness and domination.

It seems to me that the nation is in danger of being swept into a perilous experimental scheme which is anti-Democratic and anti-Republican and full of appalling possibilities of political, economic, and sectional evils. Would not Government ownership be preferable and inevitable? The owners of railroad property would probably prefer it, and whether they would or not, or whether any con-

siderable body of public sentiment would demand it or not, it is a logical necessity of Government control.

The President favors the policy of control; Secretary Taft indorses the President. Hon. John Sharp Williams, Democratic leader in the House, agrees with the President and the Secretary. All oppose Government ownership. The President and the Secretary are products of the political school of Alexander Hamilton, modified by Democratic experience. Mr. Williams is a product of the opposite school, that of Jefferson—extremes meeting—the first two being, however, more logical in evolution. They are equally vigorous in denouncing Government ownership. I greatly admire the ability and honor the patriotism of these eminent statesmen, and do not presume to criticise, though I wonder at their position. But Mr. Bryan, another great leader, and a pupil of Jefferson, boldly favors municipal, State, and Government ownership of all public utilities. He also indorses the President, as far as he goes, but he alone of the quartet of great leaders is logical. Mr. Bryan evidently believes that control means ownership sooner or later, and he is supported by the logic of events. To his wonderfully clear vision the result stands revealed. Consider those events a moment.

Three more or less distinct periods appear in the history of railroads in the United States: The period of excessive construction, the period of excessive competition, and the period of excessive regulation.

Under the first the general rule of progress was reversed, and construction anticipated development. The railroads became the pioneers of progress. Under this impulse the country experienced excessive railroad building, with the result that the struggle for existence soon became fierce and excessive competition resulted. Under excessive competition came the evils of rate cutting, discrimination, and a general demoralization which produced regulation, first by States. Under regulation, which in the States soon became excessive, the short independent lines, built by enterprising communities and interests or by speculators, were forced into bankruptcy and passed into the hands of interstate lines, which thus become trunk lines. The trunk lines resorted to pooling in self-defense against State regulation and excessive competition, and the resulting agitation produced the Interstate Commerce Commission. The act creating the Commission forbade pooling, and the antitrust act prohibits agreements between trunk roads to establish uniform rates. This condition developed the "systems"—the present condition. Now, to excessive State regulation we are asked to add excessive national regulation or control, in spite of the fact that if State regulative policies were applied to interstate business general bankruptcy of roads would be inevitable. Observe the steps in the evolution: Excessive construction, producing excessive competition; excessive competition, producing rate demoralization; rate demoralization, producing regulation; excessive regulation, in the breaking down of short competing lines, produced the trunk roads and pooling; the trunk roads and pooling produced the Interstate Commerce Commission and the antitrust law, which together produced the "systems"—and what next? The answer must be, if regulation continues on the line laid down, if the power of the Commission is increased as demanded, "Government

ownership," the adding of thousands of millions to the national debt, and probably a million men to the already enormous army of Government employees, *and Hamilton will triumph over Jefferson at last.* If not, a reaction will follow the confusion, the complications, and the dissatisfaction resulting from the efforts, be they ever so patriotic, of an inexperienced, incompetent, and impossible body endeavoring to administer a vast and complicated interest interwoven with an infinite variety of conflicting interests, embracing thousands of rival communities and countless local industries and products—a reaction that may sweep the Commission from power and either create a new tribunal or revert back to the present system of regulation, with the courts as final resort.

At this point it is submitted that the best interests of the country will be best served under the present system and a strict enforcement of present drastic laws, which insures the fullest knowledge of conditions all over the country and guarantees rates in the main just and equitable. The steady and marked decline in rates for thirty years demonstrates this. It is further submitted that the railroads may be trusted to foster the interests upon which they depend. They all promote and develop because they need the business resulting. They will protect and encourage, because it is not only to their interest, but their very life, to do so.

I submit, further, that the things shippers are most interested in are prompt and efficient service—the best possible service—and stable rates. To meet this imperative need it is primarily necessary that the railroad officials shall manage the business of the roads. How are they to do this satisfactorily unless they are to exercise the rate-making power? They must know the sources and sums of their revenue in order to provide adequate service. How are they to do this when a few men in Washington may make orders at any moment that will reduce their revenue and demoralize their business generally? Stability of revenue is a primary necessity of the best service, of adequate service, and the proposed legislation would destroy stability and render calculations as to future needs and the means of supplying them impossible.

And local interests are best off under the present system. The railroads recognize their primary dependence on local business, and non-competing points especially can not possibly fare so well as under the protecting care of their local roads. Under the "systems" they do this as never before. They can, and will, and do protect and encourage interests and communities on their lines, and secure for them the concessions from other systems necessary to their legitimate growth and prosperity. The establishment of factories at local points all over the country proves this. And with their army of freight men posted in every nook and corner and center of our great country, they are the best informed as to conditions, needs, and possibilities of every locality, and with this information and their self-interest they are both able to and do protect and promote. It would be impossible to make the roads more diligent on these lines—they may be harried "into less."

I plead especially for the South. That "land of promise" has found "The Jordan" of national politics a "hard road to travel." We have had our trials and now our struggles are fruiting in pros-

perity. We have our problems—one as serious, or more so, than the North's labor problem—and a wider prosperity, with healthy immigration, will greatly aid us in solving this in peace. The railroads built up the great West. The railroads are now developing the South. They are spending many thousands of dollars to develop its resources, plant industries, secure desirable immigrants, and encourage agriculture. They are helping in every practicable way every community that shows a disposition to help itself. They are helping the farmers to a more diversified and better system of farming by cooperating in experiments, farmers' institutes, and the distribution of the best literature. They are the hope of the South.

Let us present briefly a few facts in point. The records in the office of the general industrial and immigration agent of the Louisville and Nashville Railroad, in Louisville, present the following facts and figures as to industries located during the year 1904 through the efforts of the industrial agents of the road: In Kentucky, 60 industries, representing $2,767,000 capital; in Virginia, 6 industries, with a capital of $835,000; in Tennessee, 69 industries, with a total capital of $1,776,700; in Alabama, 122 industries, with a total capital of $5,452,100; in Florida, 18 industries, with a total capital of $615,000; Mississippi, 5 industries, with a total capital of $115,000; Louisiana, 4 industries, with a total capital of $285,000. A grand total of 308 industries and $15,491,300.

Most of these industries are located on the tracks of the Louisville and Nashville. Some are on the tracks of other roads, but with which the Louisville and Nashville has physical connection.

It is proper, also, to observe that the mileage of the Louisville and Nashville Railroad is greatest in Kentucky, Alabama, and Tennessee, in the order named, and least in Virginia, Louisiana, Mississippi, and Florida, in the order named.

The other great systems in the South—the Southern, the Illinois Central, the Atlantic Coast Line, the Seaboard Air Line, the Frisco, the Nashville, Chattanooga and St. Louis, can all make as good comparative showing. The figures I present are official, and I have them in detail with me for such use by the committee as may be desired.

I desire also to present briefly some figures and facts as to immigration. During the year 1904 the Louisville and Nashville located immigrants as follows:

Alabama: 704 families, of 2,394 persons, who purchased 34,773 acres of land.

Tennessee: 213 families, of 836 persons, who purchased 29,142 acres of land.

Florida: 132 families, of 512 persons, who purchased 17,743 acres of land.

Mississippi: 83 families, of 292 persons, who purchased 560 acres of land.

Kentucky: 15 families, of 62 persons, who purchased 1,116 acres of land.

At points on the line in other States, 3 families, of 14 persons, who purchased 450 acres of land. A total of 1,150 families, of 4,110 persons, and 88,824 acres of land. And we confidently expect better results for 1905, provided the railroads are not harassed with ex-

cessive regulation, State and national. I have the facts in detail of this immigration, showing the countries from which the immigrants came, etc., much the largest number, about half the total, being from the northern States of America. The Louisville and Nashville boasts of the only Finnish colony in the South, at Pecan, Miss.

All the other southern roads can make as good comparative showing, for they are all active through special bureaus in the work, and friendly rivalry, with cooperation, characterizes the general policy.

This good work is being accomplished at heavy expense in salaries to agents; in reduced rates to prospectors; in printed matter, consisting of circulars, folders, maps, pamphlets, and illustrated papers and books by the tens of thousands, and circulated North, East, and in Europe. At this moment special work to secure desirable immigrants from Europe for the South's vast area of waste lands is being inaugurated and will be pushed with that vigor and liberality characteristic of the railroads in the business of development.

The premises considered, may I not appeal to Congress, through this committee of representative statesmen, not to disturb with radical legislation the relations now existing between the railroads and the people in the South? That section, long held back by hard conditions—political, economic, and social—needs the friendly and unembarrassed cooperation of her railroads, such as the great West so long richly enjoyed.

Southern men, those who have taken the nonpartisan view of the question, fear Government control. The tendency toward centralization and socialism is less marked in that section than in other sections of the country, though there be Jeffersonian Democrats—so called at least—who favor Government control of railroads. I sometimes think that Jefferson, whose theory was that the least governed is the best governed, must turn over in his grave almost daily as his name is coupled with centralizing and socialistic policies. But the South is democratic in the larger sense of the word, and I am constrained to believe would, on a fair and thorough canvass of the issue, condemn the policy of control which must lead to Government ownership, or, after a disastrous experience, to a reaction back to present or to other untried fields of regulation. Already eyes are being opened and unmistakable signs of reaction appear. The farmers and the body of consumers are beginning to learn that rate tampering by commissions adds nothing to the price of the products they sell, and rarely, if ever, appears in reductions on cost of articles they buy.

But the South fears another thing. She is a minority section. She has small voice in the Government. Her representation on the Interstate Commerce Commission is and will be that of a minority. Hence she fears, and justly, the overshadowing influence of the all-powerful North, with its vast population; its vast industrial interests; its vast capitalistic power; its complete domination in the political, materialistic, and economic policies of the Government. If natural advantages are permitted to have their proper way, the South will prosper. If her railroads are not crippled by excessive control and weakened in their potentialities, and are permitted to continue along present liberal lines, the South will become rich and great. This view is encouraged by the certainty of the Panama

Canal, which should and will, when completed, if the southern railroads are not crippled and hampered, invigorate southern seaports and swell southern commerce, enriching and strengthening the whole South.

I will not assume to speak specially for the other Southern States, but I will say for Tennessee that the conditions there as between the people and the railroads are ideal. Peace, cooperation, good will, mutual forbearance, friendly consideration, reciprocal relations prevail. There are few complaints from Tennessee as to discrimination. The State railroad commission has few to deal with, and these few are always satisfactorily adjusted. No lawsuits have resulted. The relations between the farmers and the railroads are especially cordial. The roads are developing improved and diversified farming by expert cooperation, by good service and educational literature, and by the most liberal policy toward the agricultural bureau and the farmers' institutes. In Tennessee, I firmly believe that the sentiment of the people is that present conditions should not be radically changed; indeed, that well enough should be let alone. And I firmly believe that if the issue were fairly made as to making rates, whether by the Interstate Commerce Commission or the Government (which can know little about local conditions and needs), or by the railroads, whose agents are in every spot and acquainted with every interest, and who are in the main citizens of the sections they serve, I believe the verdict would be in favor of the latter, the present method.

We have our inflated communities, our chronic kickers, and our know-alls, but on the whole Tennessee is doing well, and satisfaction with her railroads in the main prevails. There is so little real complaint that I may declare with truth that present methods, policies, and conditions are satisfactory, and certainly preferred to experiments. To a more or less extent these conditions do, or can, prevail in other southern States. It is not the fault of the railroads if they do not. Self-interest, the broader policies that have come with experience and patriotism, characterize railroad management in the South for the most part, and the result is a great awakening on lines of progress, growing good will, and the highest hope for the future. A charge of rebates or secret cutting is rarely, if ever, lodged against southern railroads.

In conclusion I would again modestly exhort the Government to enforce the drastic laws on the books against rebates and rate cutting, punish the guilty, be they high or low, but do not embarrass or imperil the great transportation interest of this marvelous country of ours by punishing the innocent many with the guilty few, and in doing so create a national and international political machine, perilous alike to railroads and the people, bringing upon the whole country, the public, as well as the railroads, confusion, uncertainty, and alarm.

STATEMENT OF HON. JUDSON C. CLEMENTS, INTERSTATE COMMERCE COMMISSIONER OF THE UNITED STATES.

Senator KEAN (in the chair). The committee will be glad to listen to you, Mr. Clements.

Mr. CLEMENTS. Mr. Chairman and gentlemen of the committee, it had not been my purpose, and certainly was not the purpose of the Commission, so far as I am advised, in the beginning of these hearings, to ask for any hearing before the committee on the subject of legislation. The Commission has, since its existence, annually made reports to Congress, as the law peremptorily requires it to do, respecting the work of the year, respecting defects in the law, and making such recommendations and suggestions as may be deemed necessary for the amendment of the law. That is a specific requirement of the original act. The Commission has endeavored, upon the facts developed from year to year, to make recommendations in compliance with that duty put upon them, and has given reasons therefor. This has been done from year to year for a long period of time, and we would have been content to let the matter rest there, so far as any theory of amendment is concerned or any reasons therefor, because they have been set out with care and repeatedly presented in that form.

But I have felt myself—and I have no doubt that the other Commissioners have felt the same way—that from the beginning of these hearings there has been a continued effort to disparage the Commission, disparage its work by insinuation, by innuendo, and by one form of expression or another, upon generalities and without specifications, to put the Commission on trial. One who would read the newspaper accounts of these hearings—and these accounts are justified, as the statements of the gentleman who just preceded me indicate—in saying that this inquiry in respect of amendments to the law has been largely turned into criticism by those witnesses, if they may be called witnesses—advocates I should say, mostly—by the manner in which they have discussed this subject.

For illustration, the gentleman who has just taken his seat is so much encouraged by this atmosphere of criticism, this contagion which grows stronger day by day, as it is uttered by one and heard by another—he has gone so far as to say, in effect, that recently some of these complaints are by invitation or solicitation. Where is the proof for that charge? The gentleman stands up here resting under the obligations of a gentleman to be fair and just, having heard these insinuations day by day by the advocates of the corporations that are to be regulated in some form or another, until he grows bold enough to charge that these complaints have been brought upon solicitation, the inference necessarily being upon the solicitation of the Interstate Commerce Commission. Where is his proof? Where is the justification that a just and honest man wants to present to a fair and intelligent committee as a warrant for such a statement as that?

I can not undertake to reply in detail to all these matters that have been going on. The Commission all of last week was in Chicago hearing cases. We can not do that and read every word that is said here from day to day. I know not what is in these various publications from day to day in large part. I have looked into it so far as it has been practicable to do so consistently with the work we have had

on hand, enough to see some samples of it. But I shall content myself with dealing with a few representative samples of this character of misrepresentation, and not undertake to consume your time for a week here to follow gentlemen, some of whom have occupied your attention for three days at a time, mainly for the purpose of disparaging the Commission, not upon specific charges, but upon innuendo and insinuation.

There is no reason why this condition of feeling should be manifested here. The Commission is required to recommend from year to year what it finds and believes to be needful of amendment. That is what it has done. The gentlemen who are casting these reflections upon the Commission at this season have never been very much agitated by the recommendations of the Commission heretofore. Why? Because they have never been brought forward. There has been no serious proposition to amend the law. There has been no immediate probability that it would be done.

But last fall the President of the United States, impressed with the conditions as they exist, put into his message the specific and pointed recommendation that the law be amended in two particulars—one for the suppression of rebates and other kindred discriminations, and the other for the correction of unreasonable rates.

Senator DOLLIVER. Judge Clements, my recollection is that it did not specifically mention rebates or discriminations, but recommended simply that the act of the Fifty-eighth Congress be enforced. My recollection is that he did not suggest any new legislation as to rebates.

Mr. CLEMENTS. The President's message?

Senator DOLLIVER. Yes.

Mr. CLEMENTS. Well, I do not know that he specified any particular form of legislation, but he indicated clearly that such legislation as was needed for the correction of these two recognized evils should be had. I think you will see, by a reference to the language of it, that that is true. I do not remember that there was anything in it that specifies that the law had not been enforced or that it was based upon any such assumption as that.

Senator DOLLIVER. I do not think he blamed the Commission for not enforcing the law, but my recollection is as I have stated.

Mr. CLEMENTS. When you find that, Senator, we will come to it again. I have not the message before me now. What I remember about it is this: That the annual recommendations of the Commission for the last ten years, which have yearly been substantially the same, have not attracted any specific and particular attention as being the basis of a probable early amendment of the law; but when the President of the United States put the matter into his message, he brought it up conspicuously, and that has been followed up until it was apparent that there was a probability of some legislation.

It is in that condition and on that account that these gentlemen have seen proper to conduct their advocacy of their interests here in such a way as to put the whole blame on the Interstate Commerce Commission. They never manifested any feeling toward the Commission till now, when you come to this matter; and now, instead of showing by argument, by facts, and by conditions that the President is mistaken, or that Secretary Taft—the gentleman a few

moments ago alluded to him—is mistaken, or that Mr. Williams, of Mississippi, is mistaken, or that Mr. Bryan is mistaken, with all of whom he is pleased to put us in company, of which I am not ashamed, the matter has become acute. It has loomed up in such a way as to indicate that something practical will have to be done in the way of regulation and amendment of the law, and therefore it becomes a matter to be met by these gentlemen who resist that regulation; and, instead of discussing the question on its merits—I do not mean to say that they have not done that—in large part they have switched off from that and undertaken to switch your attention and the public attention from the merits of the question into an arraignment of the Commission.

For what? For what is the Commission arraigned by these gentlemen who appear here, I say, not strictly as witnesses, but as advocates? It is because the Commission has not enforced the law against them. The Commission has not stopped them from paying rebates. The Commission has not paid rebates. Every rebate that has ever been paid has been paid by a railroad. It is the railroads that arraign the Interstate Commerce Commission because it has not compelled them to quit committing crimes which they confess and admit, and then turn upon us and make the charge that we have not done our duty in compelling them to obey the law!

Now, what is the history of this matter? You have been told by Mr. Hines that late in the eighties, within two or three years after the Commission was organized, the railroads began to ignore those orders. That is true. They did not, however, begin to ignore these orders upon any contention that was then made manifest that the Commission did not have jurisdiction to make those orders, but it was upon the fact that they knew that the finding was only a prima facie one, that they would have another trial in court, and that they would try it over again, because they did not admit that the Commission was right in each case. I will have more to say about that later in connection with another branch of the discussion.

The original act made it a crime on the part of a railroad to pay rebates, but not on the part of the shipper to receive them. In 1889 that was amended so as to make it a misdemeanor on the part of the shipper to receive rebates. The law contained a provision that no witness should be excused from testifying in any case before the Commission on the ground that to do so would tend to incriminate him, but that his testimony should not be used against him in any proceeding.

Mr. Counselman, of Chicago, now deceased, who owned a large elevator, or, more than one elevator, and was engaged in the grain business, in the capacity, as we understand it, of a middleman, was called before the Commission and was asked whether he had received rebates or not from the railroads, and he declined to answer on the ground that to do so would incriminate him. The Commission undertook to compel him to answer, but, as you know, under the law the Commission has no power to punish for contempt or compel a witness, but they must stop the proceeding and go into court and ask the circuit court to compel him to answer. The Commission undertook that, and the court decided with Counselman. That case was taken by appeal to the Supreme Court of the United States, and it was

held in that case that the witness could not be compelled to answer. because, although the statute undertook to give him immunity, it did not acquit him of liability to punishment and that his testimony, which he might be compelled to give, might be used as a clew to procure other testimony on which he could be convicted without that; and therefore that part of the statute became a nullity.

After that the Commission was dependent upon the will of witnesses as to whether they would tell about any of these matters or not, and of witnesses who did know of them. So when you asked a witness then, all he had to say was, "That will incriminate me if I should answer, and I will not answer." Under that state of the law you can see it was impossible to get testimony about these matters.

The next step was that the Commission asked Congress to pass a law to correct that, and Congress did so with reasonable promptness, providing that a witness should not be excused, but that he should not be punished for any offense concerning which he might testify; not simply that he should not be prosecuted, but that he should not be subjected to indictment at all for any matter to which he testified..

That was challenged, and we got into court under that law. It was said by the able advocates, by those gentlemen who represented the Baltimore and Ohio road, I believe it was—at any rate, it was a railroad witness—that it was not adequate protection; that to compel a witness to tell of his own misdemeanors was to disgrace him, would reflect on his reputation, and that he was entitled under the Constitution of the United States to protection against that. But the Supreme Court brushed that aside and said he had ample protection for all that the Constitution intended to give him; that if he wanted to blacken his own character that was his own act.

We took steps several years ago to test the first law; procured an amendment to cure that defect after it had gone all through the different courts; and then we were met at the threshold and again compelled to go through the same process to the Supreme Court.

There was no idleness about this. It was pursued with diligence. After that act was passed we were investigating the Illinois Steel Company and its connection with some railroads there, in respect of alleged rebates in the form of terminal charges, etc. This was several years later. Then a witness named Brimson, an employee on the part of the steel company, refused to answer on general grounds, that the Commission had set down a hearing on its own motion under a general order for a general inquiry under the twelfth section of the act to regulate commerce. The witness was asked to produce books and papers from his employer's office. He was advised by counsel to object to answer, and he did refuse to answer, not on the ground that it would incriminate him. He did that it first, and then withdrew it, and put it on the ground that the Commission was not a grand jury and had no right to ask him general questions; and that although the twelfth section of the act to regulate commerce did seem to give the Commission authority, it was unconstitutional and void. So we started in on another series of litigation about getting testimony.

We went to the circuit court, the contention being that the Commission had no case against the witness, and that the courts would not lend themselves to become a mere instrumentality of the Com-

mission to procure testimony for it; and the circuit court held that within the Constitution of the United States there was no case in controversy giving the court judicial authority and power to act.

So that came to the Supreme Court of the United States on appeal by the Commission. The case was heard and decided, the opinion of the majority of the Supreme Court being in favor of the contention of the Commission, and that the witness should be compelled to answer.

So here were these strung-out contests from year to year, from one court to another, on one ground and another, and after the law was amended in order to get a basis upon which to get an answer from a witness.

Senator NEWLANDS. When was that last case concluded?

Mr. CLEMENTS. I do not remember the year. It was perhaps as far back as 1898. I would not undertake to give the year exactly. Those three cases covered quite a number of years. Possibly it was 1896, instead of 1898, as some gentleman suggests here.

Only last year we had an inquiry in New York in the coal case, in which a witness refused to produce books, papers, and contracts, and refused to answer certain questions. So the Commission had to suspend the inquiry and go to court and ask for a compulsory process to require the witness to answer. That case was argued. The investigation was suspended, and the matter went on for several weeks or possibly months, for there was a decision whether the witness could be compelled to give testimony or to produce books and papers. The ruling was against the Commission, and we appealed it to the Supreme Court, and there the ruling was in favor of the contention of the Commission, that they were compellable and must give the testimony. Then the case had to be set again, and we had to go back and take the testimony.

Along last fall, when we were investigating the matter of the Armour Car Lines and the private cars in Chicago, another witness refused to answer, and we have there a proceeding pending now to compel a witness to answer questions.

All these cases show the history of the contest from the very beginning, soon after the Interstate Commerce Commission was organized and when there seemed to be a general purpose to disregard the orders of the Commission and dispute every question at every point.

This is a brief history of that matter. In addition to that, as you were told yesterday by Commissioner Prouty, the Commission inaugurated many general investigations to ascertain what was going on in regard to flour rates from Minneapolis to the East, where it was in the air that there were rebates in that business, as well as in the grain and packing-house products at Chicago, Kansas City, and other places. Commissioner Prouty told you yesterday the results of these earlier inquiries, when it could not be proved by any witness that rebates were being given.

But a turn came, for some reason, in 1902, when we had another general inquiry of that sort in regard to grain and packing-house products, when they did come up, one by one, and tell that they were giving rebates and had been doing so for years. Not only that, but let me read you a little of the testimony.

It seems such an easy thing for a gentleman to come here and call us amateurs. It seems such a little thing that the Commission could enforce the law against everybody if it only wanted to. If the gentleman had been around with the Commission on these various occasions and had heard from the same witnesses that there were no rebates, and afterwards that there were, and had seen the contest that they had under these statutes and the necessity to make other statutes by Congress in order to meet the situation, he perhaps would not have thought that the Commission had been sitting idle while this condition, which he so much deplores, was continuing.

After having told that there were rebates paid, Mr. Johnson, of the Rock Island road, at that time vice-president of it—a road represented here a few days ago by Mr. Mather, who said that all this agitation for amendment of the laws was mostly on account of misled sentiment. Now, Mr. Day was employed by the Commission at that time to conduct this inquiry before it, and he was asking some questions of Mr. Johnson. As I say, Mr. Johnson at that time was vice-president of the Rock Island road, as I remember. After having testified that rebates had been given--I will not undertake to read all of this—Mr. Day asked and Mr. Johnson answered as follows:

Mr. DAY. How were these payments noted in your accounts—were they as refunds of overcharges?

Mr. JOHNSON. They do not go through our general accounts.

Mr. DAY. How are they carried—in separate accounts?

Mr. JOHNSON. They are not carried very long. They are destroyed soon afterwards.

Commissioner PROUTY. What do you mean by saying that they do not go in the general account?

Mr. JOHNSON. I suppose they go through the treasury. I mean they do not go through the freight auditor's account in the ordinary way of an overcharge claim.

The CHAIRMAN. There must be an entry on the books of your company somewhere corresponding to the amount drawn out for this purpose.

Mr. JOHNSON. I suppose there is in the treasury department.

The CHAIRMAN. What that entry is you do not know?

Mr. JOHNSON. No; I do not know anything about that.

* * * * * * *

Commissioner CLEMENTS. Take one of these transactions and tell us what evidence there is now in your books or papers of the transaction. A claim is filed. The communication—this statement comes from the house, for instance, in an envelope. You take that and check it up. Then where does it go?

Mr. JOHNSON. I think it is destroyed.

Commissioner CLEMENTS. And upon some sort of memorandum a check is drawn?

Mr. JOHNSON. It is not destroyed until checked up with the billing—the file in the office—then the statement is made from the claim as filed. The draft is drawn, and then the papers are destroyed, as I understand.

Commissioner CLEMENTS. Why are they destroyed?

Mr. JOHNSON. Simply for the purpose of destroying any evidence there may be.

Commissioner CLEMENTS. Is there no entry on a book that so much money has gone into your treasury and some of it comes out?

Mr. JOHNSON. That is a matter with the treasury department. I do not know anything about that.

Commissioner CLEMENTS. You do not know what entries are made about it?

Mr. JOHNSON. No; I do not.

Commissioner CLEMENTS. All the papers you know about or entries that you are familiar with are destroyed?

Mr. JOHNSON. I understand they are all destroyed.

Commissioner CLEMENTS. Have you not any recent ones?

Mr. JOHNSON. I do not think they are more than thirty days old.

Commissioner CLEMENTS. You think that all up to within thirty days are destroyed?

Mr. JOHNSON. That is the rule or custom.

Commissioner CLEMENTS. Is it probable you have some that are not yet destroyed?

Mr. JOHNSON. It may be. There may be some that have just been filed.

Commissioner CLEMENTS. Well, is that practice still going on of paying these claims?

Mr. JOHNSON. The old ones.

Commissioner CLEMENTS. You are paying the old ones?

Mr. JOHNSON. Yes, sir; nothing has been filed since the 1st of January.

Now, there is the testimony of that witness, and I need not read more. There is plenty more of it in there. Mr. McCabe, of the Pennsylvania, also testified that these rebates were paid and adjusted, and that the papers were probably destroyed. Mr. Bird, of the Milwaukee road, also testified as to this wholesale practice of paying these rebates, and Mr. Mitchell, of some other road in the Northwest—I do not know just at this moment what it was—testified specifically that these vouchers and papers were destroyed soon after they were made, that the entries were not made upon the books, and there were settlements from time to time on a piece of paper or memorandum, and as soon as that served its purpose it was destroyed—and destroyed, as Mr. McCabe said, because they were afraid at some time they might be called upon to lay those papers before the Commission. Now, these things are all in there, and I would be glad, with the consent of the committee, not to have to read any more of that, but to insert it as an appendix of what I may say.

Senator DOLLIVER. That may be done.

Mr. CLEMENTS. Here is the document. It all refers to these matters. I do not care to single out a particular witness or to point out what he has testified to.

The document referred to is printed as Appendix G.

Senator CULLOM. Do you mean to say that that is all there is on the subject of rebates in this country?

Mr. CLEMENTS. No; I say that is the testimony in that particular hearing—at that particular time.

Senator CULLOM. Just one hearing?

Mr. CLEMENTS. As to rebates.

Senator CULLOM. That relates to rebates.

The CHAIRMAN. What year did that occur?

Mr. CLEMENTS. January, 1902.

The CHAIRMAN. Before the Elkins bill was passed?

Mr. CLEMENTS. Yes.

Senator CULLOM. There is testimony there on both sides of the question.

Mr. CLEMENTS. Yes. The only people who were called in that case were the railroad officials. They were the only ones examined. It is their own testimony in relation to what they themselves did.

The CHAIRMAN. I thought you described the cases as occurring since the passage of the law.

Mr. CLEMENTS. I will come to that directly. The Commission has been arraigned here by so many of these advocates of these people who have been indulging in these practices for not doing anything—sitting idly by—that I simply want to show in some form what we have been doing and what our difficulties have been, and how it has attempted

to get decisions that would enable us to do anything, and how it has taken time to get an amendment to the law that we might proceed in order to get testimony about anything. Of what value would be the reports of the findings of the Commission so long as it is powerless to get the testimony to develop the whole case; of what use would be the whole business of ascertaining the facts and making findings and reporting them as a basis for suit in court to enforce the order of the Commission unless the Commission, in some way, can get the testimony? And, as I have pointed out, it had a series of lawsuits in order to get on a basis where it was understood we could get it.

Now, you will see there what the methods were of concealing these rebates and of destroying the testimony—admitted and sworn to by the gentlemen under whose supervision it was done. Mr. Tuttle told you a few days ago here, as I remember it—the statement is in the record—in one instance, on one page, that rebates can not be concealed; that there must always be some evidence left which an active commission or an investigating authority could find out. On the next page he says, in substance, that if a road was going willingly and deliberately into the rebate business they certainly would not leave any evidence of it. I have this quotation here, and I could read it to you, but you have heard the statement and it is in the record. I will not take the time to quote what he said literally. Then that was followed up by Mr. Morawetz, who said about the same thing. First, it is an easy matter to detect these things. Surely the Commission could do it if it would. That is the substance of it. On the next page we find that if it is undertaken to be done those who do it, of course, will conceal it. Then it was suggested by the chairman of the committee or somebody else that there were various ways of doing it.

Sometimes it might be a present, that had nothing to do with it and would not appear on the books—a present to his wife or some member of his family—and then it was agreed all around by these gentlemen who said the Commission could do it and ought to do it and was to blame because it had not been done, that nobody would be fool enough who was going to pay rebates to leave the evidence lying around by which that fact could be detected. That is the substance of the argument. Now, these things are not consistent; but what is the matter in issue? What is the question before the country at this time? If you were to listen to the gentleman who was last before the committee and to many others, you would suppose that the Commission had recommended and that the President had recommended and that there was a bill pending now here that should authorize the Commission to lay its hands upon every rate in the country to-morrow and to fix it and regulate it arbitrarily. We hear that expression continually—arbitrarily fix all rates.

The Commission has never intimated that it was in favor of any such procedure as that; no such thing has been contemplated by anybody that I know of in connection with this subject; no such proposition is involved in the matter; but they say it will lead to that, that rate by rate you correct one to-morrow and another one the next day, and after a while another one, and the next day a good many, and finally you will have laid your hands on all of them. Well, about the best answer to that is that for the ten years the Commission was undertaking to exercise this, no such result as that came about. There

was no such avalanche as we have heard would come upon the Commission next week, if it had these powers. There was no such revolution as that. Why, we hear continually, every day this is talked about, that it would bring chaos, ruin, bankruptcy. Did it bring it? Why, Mr. Hines said, in his argument a few days ago, that if this power was given there would be a perfect avalanche of complaints on the Commission; it would be overwhelming; and no matter how many there were, or how efficient it might be, that it could not move with the business. That was not so then. I am not undertaking to quote literally his words, but that is the meaning of it.

Senator CARMACK. You mean it was not so while the Commission was actually exercising that power?

Mr. CLEMENTS. Yes; the ten years it did; and yet we are told in the next breath that everything is pacific, everything is quiet, every part of the country is at repose; that there is no objection to the rates; that there are no rebates, no unreasonable rates, nothing to clamor about; that there is nobody clamoring but the Interstate Commerce Commission, and that that is due to an inordinate lust for power and authority to lay its hands upon this property. Does that seem a reasonable proposition, if everything is serene and there is nobody to complain and nothing to complain about? Why would there be an avalanche heaped upon the Commission until it would be covered up and could not move? It was not so before. That brings me to the justification for the contention of the Commission before in its efforts to enforce this law. It was said a few days ago, I think again by Mr. Hines, that for several years after the maximum rate decision in 1897 it was contended that all that was sought by this new legislation was to give the Commission the power that Congress intended to confer upon it originally, and he also said that as great a man and as conspicuous a person as the Speaker of the House, Mr. Cannon, had recently voiced that idea in a caucus at the other end of this Capitol. That was so conceded, and I have no doubt that he did.

These gentlemen over here—these newspaper gentlemen—always get what was done in the caucus. If they do not get anything else right, they get that, and I have no doubt that Mr. Cannon said that, and I have no doubt that he believed it. Now, let me introduce a witness whose name is familiar to all of you and whose name is synonymous with truth and courage, a man who could say "no" to a friend and "yes" to an enemy as readily as any man who ever lived. I refer to William R. Morrison. In the first annual report of the Commission, after the first maximum-rate decision, in which the Supreme Court held that the Commission could not do that; that it amounted to fixing a future rate; that it had no such authority under the act, Mr. Morrison at that time being chairman of the Commission and one of the original panel, so to speak, appointed when the Commission was organized, penned the following words. Now, perhaps he knew as much about the views of his associates from the organization of the Commission as anybody else did, and no amount of interest on either side of this case would have induced him to shade it one iota. Here is what he said:

> The Commission exercised its power in a case commenced in the second month after its organization and continued to exercise it for a period of more

than ten years, during which time no member of the Commission ever officially questioned the existence of such authority or failed to join in its exercise. As already stated, the authority of the Commission to modify and reduce an established rate and to enforce a reasonable rate for the future was not questioned in the answer of the defendant in the Atlantic rate case, decided March 30, 1896, nor had it ever been denied in any answers made to more than 400 previously commenced, many of them alleging unreasonable and unjust charges and praying the Commission to enforce a reduction and lower the rates in the future. The circuit court of appeals in the sixth circuit either understood the decision as the Commission understood it or was in doubt as to its meaning, for that court certified a later case involving the question to the Supreme Court to determine what powers Congress had given this Commission in respect of the matter of rates. It also appears that in part the Supreme Court itself had the same understanding or misunderstanding as did the Commission, for in a later decision made in the case certified one member dissented from the determination of the judgment of the court.

In the proceedings of Monday, April 24, 1905, on page 20, occurs this statement, made by Mr. Hines:

In 1891 the Lehigh Valley Railroad was made the defendant in a suit by the Commission to enforce a rate-making order, and set up in court the defense that the Commission had no power to make rates.

Mark you, gentlemen, that is said to have occurred in 1891. This is said in connection with the argument that early the railroads began to dispute this power of the Commission, so that in a case begun in 1891 against the Lehigh Valley road to enforce an order of that kind made by the Commission the defendant disputed it. Now, what are the facts about that? There is Colonel Morrison's statement that in no answer made by any carrier—although the Commission commenced in the second month and made an order of this kind in a case begun in the second month of its existence—that for ten years no carrier put into its answer any denial of this authority. Yet we find here that it is said that in a case commenced by the Commission against the Lehigh Valley Railroad in 1891 that point was made. Now, the fact about that is that in the answer to the Commission there was no such question raised by the carrier; in the answer filed in the lower court there was no such question made, for it went to the circuit court first, and in 1897, ten years after the Commission was organized, that case was still pending in the circuit court of appeals in Pennsylvania, and the court had decided the Social Circle Case and had it pending probably before it. I am not sure as to that, but it was just before the Maximum Rate Case was decided, and the probability is that that case was pending in the circuit court. Then in the argument of that case in the circuit court of appeals in 1896 or 1897—1897, I believe it was—Mr. Johnson, representing the Lehigh Valley Railroad, did make an argument to the effect that the Commission had no such authority. In the argument in the circuit court he had said as follows in his brief:

If the Interstate Commerce Commission is clothed with the power to make reductions in rates which are uniform and nondiscriminative, such power is one which ought to be exercised with exceeding care, etc.

There was a frank admission that the power existed, but a caution that it should be exercised with care. That was in the circuit court in this case, which it is true was commenced in 1891, but no such plea or answer as that was put in in 1891; but later when it was argued before the court there was that practical admission that the power

existed, with a caution that it should be exercised with care. Two or three years later, just before the decision in the Maximum Rate Case, when that case was still pending in the court of appeals in Pennsylvania, he put into his brief the contention that the Commission had not the power. But now let us see what he said when the case was on trial before the Commission. This is Mr. Johnson, who was the lawyer then for the Lehigh Valley Railroad, and is now one of the distinguished corps of lawyers on behalf of the Pennsylvania Railroad.

The CHAIRMAN. Mr. John G. Johnson, of Philadelphia?

Mr. CLEMENTS. Yes. Now, when this case was being tried before the Commission, before it got into court——

Senator DOLLIVER. When was that—in 1891?

Mr. CLEMENTS. The complaint was filed October 19, 1888. The answer was filed November, 1888. The hearing of arguments was had on March 19 and 20, 1889. That is when the case was heard finally before the Commission. The briefs and printed arguments were filed April 4, 1889, and the case was decided March 12, 1891. This case was prepared by Colonel Morrison. It was the decision of the Commission, but in the assignment of cases it went to him also. Here is what occurred on the trial before the Commission. Colonel Morrison, reciting the history of the case and the finding of facts, and so forth, says this:

After submitting the proposed findings of facts for the consideration of the Commission, counsel for the complainants, in his concluding argument, said:

"As to the unreasonableness of the charge, we ask the Commission to find that the rate of $1.80 is unreasonable within the statute. We do not ask or care about your honors' establishing any particular rate. There are a great many ways in which these coal rates can be determined without fixing any arbitrary or inflexible standard. It could be a sliding scale, depending upon the price of coal. You could determine, first, the cost of mining the coal, and then the cost of railroad transportation. Another way to establish a rate would be at some fixed proportion of the average of the selling price of the coal at tide water. If they, the carriers, are informed that their present rate is unreasonable, they will then meet the individual operators out of their district in consultation, and I am sure some amicable arrangement will be reached by which both parties can make money."

Now, that was the suggestion of Mr. Gowan, also a lawyer of distinction, who represented the complainants in that case.

The CHAIRMAN. Was he the president of the railroad?

Mr. CLEMENTS. No; this is Mr. Franklin B. Gowan. He is not living now, I think. He was the lawyer for the complainants in this case, and that is what he said—find that this rate is unreasonable and leave it there, and we will find some way for the railroad to adjust it on some basis that will help us. That is a good deal like that which has been suggested here in the hearings a good many times, to just let the Commission find that it is unreasonable and after that is litigated and the court decides that it is unreasonable, then everything wrong will disappear, and you will get a reasonable rate without doing anything more. That is the idea of these complainants also.

The CHAIRMAN. Don't you think that the railroads would try to make a reasonable rate after that?

Mr. CLEMENTS. I should think they would in many instances. I do not repudiate that suggestion. I have no doubt that there would be such an adjustment made as would endeavor to avoid another controversy, but it might not always meet the full needs of justice.

The CHAIRMAN. That would leave the rate-making power still with the railroads and avoid all disputes.

Mr. CLEMENTS. Yes. That is what the complainant's counsel asked in this case. Now, what did Mr. Johnson say, who represented the railroad?

Complainant's counsel here expressed the belief that the coal traffic afforded a fair profit to both the producer and the carrier; that to secure an equitable division of profits it was only necessary to declare the charge made to be unreasonable, and the parties would come together and fix the proper rates themselves.

The last I quoted there was from Mr. Morrison, repeating what Mr. Gowan said. I now come to what Mr. Johnson said. He was the counsel for the road. Mr. Johnson said, in reply:

That will not do. If this Commission says that the present rates are unreasonable, they must say so because there is a different rate that they have determined to be a proper one. It will not do for you to make a general finding and say that the present rates were unreasonable, but we do not know what they ought to be. We can not fix them for you. You must agree upon them among yourselves. If unreasonable, say to what extent they are unreasonable, whether to the extent of one cent, or of many cents, or a dollar a ton. Would it be proper for you to lay down an abstract principle that would lead to endless confusion in the application? That would put all at chaos.

The committee has heard a good deal of chaos during the last few days.

For heaven's sake, do not ever make the matter of a proper rate for carrying coal one to be regulated in a conference between the carrier and the shippers. If you have been convinced by the petitioners that the present rates are unreasonable and unjust, then say what the rates ought to be. This will be your duty. I do not wonder that Mr. Gowan shrinks, etc., from the contest of the case.

Then he went on to argue that Mr. Gowan had not made out any case which would justify that kind of a specific finding. But there he says, for heaven's sake don't ever leave it for a scramble between the railroad and the shippers, with endless chaos, but to be definite about it, and if you know that this rate is an unreasonable one, you must know that something else is reasonable, because they are directly related and you can not say that one rate is reasonable unless you have a standard by which to judge it.

The CHAIRMAN. Before that he had denied the power of the Commission?

Mr. CLEMENTS. No; he denied that several years later. He denied that in the court of appeals.

The CHAIRMAN. On what case?

Mr. CLEMENTS. This same case.

The CHAIRMAN. And when he argued this case when it was taken up——

Mr. CLEMENTS. In this case the Commission made the order and undertook to do what he asked it to do and find what was a reasonable rate. The Commission was not trying then to make rates, but the Commission found that the rate existing was unreasonable, and undertook to find out to what extent it was unreasonable, and in its order to the carrier to cease and desist from the ascertained violation of the law it ordered it to cease and desist charging any part of that unreasonable excess, or more than so much, which was found to be reasonable. That was what it undertook to do.

The CHAIRMAN. Then on the appeal Mr. Johnson changed his position?

Mr. CLEMENTS. That was before the Commission Mr. Johnson said that. Then the order was disobeyed, and the Commission brought suit in the circuit court, and in the argument of that case Mr. Johnson used the language which I first read here, that if the Commission has such authority it ought to be exercised with great care. Then when the case was appealed to the court of appeals several years later he put in his final proof there a dispute of this power.

The CHAIRMAN. He got to that little by little.

Mr. CLEMENTS. He got to it little by little. He was helped to it, perhaps, by the decision of the Supreme Court in the Social Circle Case.

The CHAIRMAN. I think so.

Mr. CLEMENTS. Then he was also helped to it, a little, doubtless, by the fact that the court of appeals at Cincinnati was not a unit, or at least had seen proper to certify the decision to the Supreme Court. Judge Taft was a member of that court of appeals. Judge Harlan delivered the dissenting opinion in the case when the case was appealed. It was Secretary Taft, who was a member of that court when it certified the question up here, all of which tends to show that the Commission at least had some color of contention that it had something to do with doing away with an unreasonable rate, and it had some good company in its contention.

Senator CULLOM. And determining what a new rate should be?

Mr. CLEMENTS. Yes; and that was brought about in this way: The language of the interstate-commerce act, as originally passed, was that when the Commission ascertained in a case that there is any violation of the interstate-commerce law it shall order the carriers to cease and desist from that ascertained violation. Now, suppose a rate is a dollar and complaint is made that it is unreasonable and the Commission investigates it. The Commission takes the testimony and hears all that can be said in testimony and argument, and concludes that the complaint is well founded—that a dollar is unreasonable—and, as Mr. Johnson said here, it must have some idea as to what is a reasonable rate—at least, as to what it thinks is reasonable—otherwise it could not find what is unreasonable. The testimony that shows the one indicates the other. I do not mean with absolute precision, but it fixes a basis upon which the mind of the traffic manager or the commission or whoever it is—the jury—dealing with the matter, thinks he or they have found what is reasonable when they have found what is unreasonable.

Senator KEAN. In 1890 the Commissioners, in their annual report, I think, you will find said as follows:

> In some cases the carriers decided against have, for a considerable period, manifested a purpose not to obey an order of the Commission reducing rates, claiming to have the advice of counsel that the action of the Commission was not conclusive, and that they might safely await the determination of the courts in the premises. If they have finally acquiesced in the reduction, they have in some cases taken pains to have it understood that in doing so they were acting from motives of policy rather than because of any legal obligation which required it.

Mr. CLEMENTS. Well, I have no doubt of that. I will come to that in a moment. There is quite a difference in the question discussed.

What did the Commission do in that case, having found that the rate was unreasonable on the basis of what is thought was satisfactory testimony as to what was reasonable? It proceeds to order the carrier to cease and desist from it. Well, suppose it had found 90 cents was a reasonable rate; that a dollar was unreasonable. If the carrier refused, but put anything above 90 cents, was it not just as much in contravention of the act to regulate commerce as it was to put in the dollar rate? The law says that all rates shall be reasonable and just, and any rate that is not reasonable and just is an unlawful rate. That is in the first section. Now, if a dollar was found on the facts and demonstrated to be unreasonable and 90 cents was the best that could be found for a reasonable rate, and if that was a true finding and was justified by the facts, then any cent above 90 cents was in violation of the first section of the act to regulate commerce, whether it was 91 cents or 95 cents or $1. Each and every part that makes up the excessive rate above what is reasonable was a violation of the act to regulate commerce, according to the terms of the first section, and it was upon that theory that the Commission thought to make an order to correct the entire violation and not simply a part of it. But that has all gone by. I am discussing this in defense of the course of the Commission in the matter and as bearing upon dealing with this question now.

Now, Senator Kean has shown me what the Commission said in its report in the year 1890, and I have no doubt it is correct. That does not contradict what Colonel Morrison said or anything else that has been said here. The Commission said that it was true that in 1890 they were manifesting a disposition in many cases to disregard these orders, but why? Because, as I stated there, they were advised by their lawyers that the finding and conclusion of the Commission was not conclusive, that they could well wait until the court had passed upon it. Well, that was not disputed, that the Commission had the power when it found a rate to be unreasonable to say to what extent it was unreasonable and condemn that entire extent of unreasonableness, but it was simply saying that you have got another day in court, where you can be heard on the facts, and where the order of the Commission is only prima facie. Its findings are only prima facie. It is only the basis of a lawsuit, and you can not issue process upon it. It is not conclusive, of course. We all know that there never was any contention that it was conclusive. It was only prima facie; it was only a basis for a suit if the carrier did not obey the order, and there is nothing inconsistent with that. They were standing back and saying, I will obey this when the court orders me to do it—not that the Commission did not have jurisdiction to say to what extent the rates found unreasonable were unreasonable, but they said, "We have a day in court, and we will try the facts and we will obey the order when the court says so." That was their right and privilege under the law to do that. The Commission was not complaining about their exercising their rights under the law, but the Commission was calling attention, as it felt it its duty to do, of the Congress of the United States to the fact that they could do this and their own action was delayed until a lawsuit, one of which we have just been reading about, was commenced in 1891 and ended in 1897. That was the Coxe Case.

Senator KEAN. There is an extract from the Commissioners' report for 1895.

Mr. CLEMENTS. Thank you. Now, let me go back to that Coxe Case and say this: When the Maximum Rate Case was decided the Commission dismissed that proceeding, of course, because upon the principle of that case the Coxe Case fell to the ground; but it was begun in 1891 and it was dismissed—not tried in the court of appeals—in 1897. The Senator from New Jersey calls my attention to this quotation said to be from the Commission's report in 1895:

> The complaints investigated by the Commission relate for the most part to the measure of compensation which the shipper shall pay and the carrier accept. Yet nowhere in the act is the Commission specifically empowered to decide in any case what this compensation should be, and its authority to do so exists mainly by implication. It seems a common-sense proposition that the power to condemn a given rate as unreasonable involves the power to adjudge and declare what rate is reasonable, and the Commission has invaribly acted on the assumption. Nevertheless, the correctness of this position has been openly denied, and it may be too much to claim that the dissenting view is wholly unsupported by argument.

Well, I can tell you the history of that exactly.

Senator KEAN. That was in 1895?

Mr. CLEMENTS. Yes, and that as I remember it, was soon after the Social Circle Case was decided, in which the Supreme Court used the same language which tended to the outcome which has since been realized in the Maximum Rate Case. Although it was not clear, it pointed to that, and was cited by Colonel Morrison in that report, notwithstanding the cue that was given, if I may use that term in the Social Circle Case indicating the trend that way.

The CHAIRMAN. Was not the Social Circle Case decided in 1896, and this report was in 1895?

Mr. CLEMENTS. Well, I said I thought not. I will not be sure about that, but I do know that this question was then beginning to be mooted and discussed and talked about, and while there was a contest as to the meaning of the Social Circle Case, it turned out afterwards that in the Maximum Rate Case the judges were divided as to what it did mean, whether it went to the full extent they finally went or not. It was a controverted question.

Senator NEWLANDS. How did the court stand in the Maximum Rate Case on that question?

Mr. CLEMENTS. I think they all decided one way, except Justice Harlan.

The CHAIRMAN. The Social Circle Case was decided March 30, 1896. That is the precise date.

Mr. CLEMENTS. It perhaps had been argued and the matter was being contested. It was brewing, and the matter was on hand, and the Commission was advised then they were beginning to make this contest; but still I put the testimony of the chairman of this Commission when the Maximum Rate Case was decided—Mr. Morrison, who was one of the original panel—and I put in the testimony here of what he said about it, and although there may have been talk among lawyers and discussion about it, they put no such question as that in their answers; and Mr. Johnson, who did finally put it in there after the indications were that that was going to be attacked—you have heard his language when he held up his hands and said, "For heaven's sake, do not do such a thing as that, and leave us all at sea!"

The CHAIRMAN. Lawyers often change their opinion.

Mr. CLEMENTS. Yes; there is no doubt about that, and so do other people. Now, however all that may be, as to whether the Commission was ever justified in its contention or not, that has been settled. It has been settled now ever since 1897 that the Commission has no authority to fix a rate for the future. As I said a moment ago, it never affirmatively undertook to do that in any case. All it undertook to do was, when it found a rate unreasonable, to declare that it was unreasonable and order the violation to the full extent of the unreasonableness to cease. That, of course, in effect did operate to designate a maximum rate, which could not be exceeded for the future if the order was obeyed, but it did not fix the rate. They could have charged a less rate, and it was not an affirmative effort to name a rate, but it was an effort to say to what extent the rate in question and condemned was unreasonable and therefore unlawful.

I have not the language before me just at this time, but I have a memorandum of it that was used by Mr. Bond, the attorney for the Baltimore and Ohio, in which he said that the Commission never did undertake affirmatively to fix a rate for the future, and substantially said that what the Commission undertook to do is what I have just said, without using his exact language. That is the history of all this business. It was simply an effort to ascertain how much of the unreasonable rate was unreasonable and condemn that and leave the balance. Mr. Bond also goes to the extent of saying, in speaking of the Esch-Townsend bill, so called, that they—and when asked whom he meant by "they," he answered, "the Interstate Commerce Commission"—in writing that bill they thought they were giving themselves a discretion in regard to the fixing of a rate which he contended they had failed in the language of that bill to do. All I care to refer to in that connection is to say that when Mr. Bond said that they—the Interstate Commerce Commission—in writing the Esch-Townsend bill undertook to do certain things, to give themselves certain discretion in making a rate, that he simply absorbed what was in the atmosphere among his associate advocates here—that the Interstate Commerce Commission was at the bottom of that, as it is apparently believed to be at the bottom of everything else. No member of the Interstate Commerce Commission ever wrote a line of the Esch-Townsend bill or asked to make a suggestion about it or had anything whatever to do with it, and that statement is absolute and will no doubt be confirmed by the authors of that bill or anybody else who knows what he is talking about. The Commission had nothing to do with it. Mr. Bond just naturally assumed it because, in company, as I say, with his coadvocates here, he assumed that the Commission, of course, was at the basis of trying to get some more power and to do that which is unreasonable.

Senator CARMACK. It would be just as reasonable to assume that it was written at the White House.

Mr. CLEMENTS. Well, I should think so; or anywhere else. A great many things have been assumed. It has been assumed that the Commission started out with an unwarranted assumption of authority, headed by Judge Cooley, and Judge Cooley is continually praised, and I join in his praise, for his is a great name. These

gentlemen praise him whenever they feel he has said something which can be used, as they think, in some form about the present conditions; but I have called up the testimony of Mr. Morrison, who was on the original panel, to show that there never was a member of the Commission who questioned it or who failed to join in one of these orders, and that included Judge Cooley.

Senator DOLLIVER. Judge Cooley wrote some of the orders, did he not?

Mr. CLEMENTS. Yes; he did. Now, what has the Commission done since that? It has from year to year recommended certain amendments, among which was that the law ought to be made effective to the correction of an unreasonable rate when it is ascertained upon the facts and the parties have been heard; that is as far as it has ever gone. The Commission has never asked for authority to make everybody's rates arbitrarily or any other way. It has never asked for authority, and it does not recommend any authority, to originate rates, to lay its hands upon rates in general; and it is an assumption without reason that the Commission is moved in this matter, as we are frequently told, by a simple thirst and desire for more power. Power for what, and why? Why should the Commission put itself in such an attitude in an idle and baseless demand for power? Just to bring trouble and turmoil upon itself and everybody else connected with these questions? Why, there is no clamor, we are told; there is nothing to complain about, and all the clamor there is—it has been characterized differently from time to time, this feeling, sometimes being called "clamor," sometimes "an outcry," sometimes a "misguided argument or sentiment," and a "misleading sentiment"—all this clamor is without cause.

These gentlemen have used all these terms. They have applied those terms to the Commission in their criticism of the Commission about its desire for authority, about its recommendations, which were official and which were made under oath in the exercise of a duty. How would you have it do—run away from these things? Would these gentlemen have the Commission run away from its responsibility in reporting the facts as they are developed and its judgment as to what ought to be done as the law requires it to do? Because it has done that, all this flood of criticism has come upon it, and from what source and why? When they speak of Mr. Roosevelt, the President of the United States, as a gentleman did here, occupying the same position as the Commission, they know that the Commission has never recommended or asked for anything more than the President recommends or suggests, but the President is spoken of with great reverence, and justly so. They do not assume to criticise him, but because the Commission has done it, it is inefficient, it is greedy for power, it is reckless, it would ruin this vested property and the vested rights in it—destroy it, as Mr. Hill said, like a freeze, or a frost—anarchy, revolution, chaos, ruin, all over night—there would not be any credit to buy bonds with, to float bonds, to get money to double track, to build the bridges, to carry the people's freight—save us from such an institution as this.

Why, Mr. Hill said, in discussing this, that the Commission might

well have found something to do in investigating and dealing with the terminal charge in New York. He said, "Why should they be allowed there to charge more for floating over the Harlem River to New York than the entire rate on grain from the West?" Well, that must have been very impressive. I think one member of the committee, whom I have the pleasure of knowing, but who is not here now, asked him if that was not a matter with which the Commission could deal under the Elkins Act. Of course it was, and perhaps under the prior act, because they are required to publish their terminal rates, and so forth. He was not asked to tell what he meant by this startling assumed statement of affairs. There will be something nice for the Commission to busy itself about, and that a court would probably be slow to say that they might charge more for that little terminal floating service than the entire through rate to New York. Well, I should think it would. I do not disagree with Mr. Hill about that, but the trouble is that there is no such condition as that. There is no such state of facts as that. There never was any such state of facts as that, except possibly in the extreme of some rate war, where everything goes to pieces, like a year or two ago, when they were carrying grain from the Lakes down to Philadelphia for 2 mills—those odd and abnormal things that happen in a rate war.

I will not say that such a thing as that never happened. I think I remember when I was a younger man of a rate war down in the South when they paid a little premium to get it away from the other roads. That is, they paid the shipper a premium in order to win the freight. But there is no such condition as that now in New York, and there never is when matters are normal. This picturesque, able, and distinguished gentleman who has done so much to develop matters in the Northwest—and he is an able and a practical man—does not think that his road ought to be regulated. None of them think that any road ought to be regulated. He does not believe in regulation. Then he talked about everything being all right; that there were no rates that needed correction, no unreasonable rates, and that no railroad is going to make an unreasonable rate. Why? Because, as you were told this morning, that the interests of the railroads and its patrons are so bound up together that the very life of the railroad depends on the prosperity of the patrons, and therefore, in its own selfish interests, it can do no wrong in respect to these matters of rates.

That was Mr. Hill's attitude in substance about the matter, and yet, when he wanted to say that the Commission was idle and not doing its duty and cast an aspersion upon it, he said, "Why, here is a rate in the Southwest on engines that for 500 miles was as much as it was over his own line from Philadelphia to Yokohama, across the continent and across the ocean." Somebody asked him about that; if he thought that rate was too high. Oh, yes, he said he thought it was about twice as high as it ought to be. That is in one breath. There are no unreasonable rates in one breath. The railroads are incapable of making them, because for their own selfish interests they would not do it, and then, on the next page, he says, in effect, Here is a rate that is 100 per cent too high, and therefore, to that extent,

unreasonable and unlawful. It was because the Commission had not found it. He did not say what road that was on. He was not asked to say, and he did not state any fact that you could lay your hand on. Then he went on and quoted from the Lord's prayer, "Deliver us from temptation," applying that to the Commission, and practically saying that that was his advice.

That was practically his advice to the Commission—"Deliver us from temptation." Undoubtedly he meant in trying to get too much power; to become the five greatest men in all the world about these matters. Then he said that those who had come in contact with the Commission knew that it was incapable of dealing with these great questions in the proper way. I am not trying to use his exact words, but I am not misquoting the meaning of what he said, as you will bear witness. Now, I have been on the Commission for thirteen years, and the only time that I have ever known that the Commission came into contact with Mr. Hill, and he with it, was when we investigated the Northern Security Case or the Northern Security's plan. He was a witness before the Commission at that time and gave his testimony. When the Commission got through the Department of Justice asked for the testimony that had been taken before the Commission in that case, in which Mr. Hill and many other of his coworkers in the railroad business of the same grade testified. The Government of the United States instituted a proceeding against that under the antitrust law, and the Supreme Court of the United States held that that institution and transaction and the whole thing was a conspiracy under the antitrust law.

Senator KEAN. I would like at this time to call your attention to another case which I will show you.

Mr. CLEMENTS. The Senator from New Jersey calls my attention to an utterance made by the Commission to which I will refer in a few moments. I was speaking of Mr. Hill's rash utterances in disparagement of the Commission. One of his utterances implied that there was a terminal charge at New York for floating on the Harlem River to New York at a sum greater than the through rate on grain from the West, and I had already stated that there was no such condition. I also want to say that the lighterage charge, which has again and again been explained, does apply on floating grain across the river from the Jersey side into New York, and that is usually a charge of 3 cents. There is a floating or lighterage charge which the carriers bringing the grain to the river on the Jersey side put in for floating it across the river into New York. That is not, however, a terminal charge in any true sense. It is not contracted as a terminal charge. It is what the delivering road which makes the last haul charges in a division of the through rate from the West to New York, not to Jersey City or to Hoboken or to any of those places on that side of the river, but there is a through rate charged from the western point to New York proper, and that includes the transportation across the river at New York, and the delivering road which does that in its own floating vessels, which is a part of its line, takes 3 cents out of the through rate before prorating the balance between the connecting lines that have originated it in the western points.

So that it is no more a terminal charge than is the division of the last road in every connecting through route on any transportation.

It is not any sort of terminal charge that the law requires to be separately charged. There is no secret about it. It is a division of the through rate, and the criticism was wholly unwarranted by the facts or by any interpretation of the law as applied to the facts that exist. Now, I did refer to this gentleman's use of that portion of the Lord's prayer, "Deliver us from temptation," which meant that this Commission ought to keep out of temptation to seek more unnecessary power, and I refer to the further statement, which was to the effect that those who came in contact with the Commission knew perfectly well that it was not competent to deal with these questions. That was the substance of it, and I repeat that the only time since I have been on the Commission that he has had contact with the Commission, or the Commission has had with him, was when it investigated the Northern Securities scheme, in which he was a witness and told of the scheme, and, of course, we never convinced him that that was a bad thing to do. The Supreme Court doubtless has failed to convince him that it was not a good thing to do. He expresses with freedom his contempt for the views of the Commission about these questions.

Like other witnesses who have appeared here, or advocates, he is not so ready to express his dissenting views from the court, and from the President of the United States, but he focalizes his wrath upon the Interstate Commerce Commission. The Supreme Court of the United States in that case held that that was, as I repeat, a conspiracy in violation of the criminal provisions of the antitrust law, and whatever else may be said of the Interstate Commerce Commission, the judicial power of the United States has never yet been called upon to restrain it from committing a crime against the public under the interstate-commerce law or the antitrust law. Mr. Hill further said:

> A year ago we were carrying flour from Minnesota to Australia and to China and to Japan, but the Interstate Commerce Commission came in and affixed a condition that compelled us to stop carrying the trade.
>
> Senator FORAKER. What was that condition?
>
> Mr. HILL. They said, "You must file with us your through rate and your proportion as between your ships, whether it is your ship or anybody else's, with us in Washington." We said, "If we file a rate, it is a published rate, and the German ship or the British ship or the Dutch ship or the Norwegian ship or the Italian ship is under no such obligation, and we can not change it after we have filed it with you, without notifying you," etc.

Now, there is a statement that the Commission had fixed a condition which broke up this beneficent business, good for the railroad that Mr. Hill represents, good for the public, and good for all American people to dispose of their surplus, etc.

Senator KEAN. What was the fact?

Mr. CLEMENTS. I was just coming to that. The Commission had held an inquiry in respect to the matter of the publication of tariffs on exports and imports, and, having called in the railway people, notified all of them and heard what they had to say about it, wrote up what it believed to be the facts and the requirements of law in respect to that matter.

Senator KEAN. In this instance did you try to compel the Great Northern road to file their rates?

Mr. CLEMENTS. No, sir; we did not. We ascertained the facts

and presented them in a report, as the law requires, and presented our conclusions in respect to it, and, reading the sixth section of the act to regulate commerce, which requires all interstate rates and foreign rates in respect to these matters to be published and filed, we could not do anything except to find that the law requires what it says.

Senator KEAN. Is there not a limitation on that?

Mr. CLEMENTS. No. The Commission had investigated this years ago and listened to the complaints of carriers to the effect that literal compliance with that in respect to import and export would embarrass them in many respects in this oriental business and in other respects, and in its annual report to Congress had set out these difficulties which they encountered in complying with that provision of the law in regard to export, and had invited the attention of Congress to it as a thing in which they ought in some respect to be relieved from the embarrassment and trouble. The matter kept on. Complaints were made to this effect. I remember once when we were making a general inquiry about grain rates and packing house product rates from Kansas City—the inquiry was in regard to rebates—one gentleman suggested there might be a cessation of rebates in respect to domestic business, possibly, carried wholly in the United States, but so long as the export rates were not published and not required to be published and, in fact, were not published, that it was an easy matter for a packing house to give its business, both domestic and export, to a railroad, and pay the full rate on the domestic and take whatever it pleased in the way of rebates out of the export business.

If there is to be no established tariff, or if there be one that is not required to be published, or, if published, it is not required to be adhered to, and the provisions of the sixth section do not apply to export business, it needs only a suggestion to indicate that a business that is carried on partly export and partly domestic can pay the full rate on the domestic business in which the tariff is published and do what it pleased in respect to the balance. So, the Commission never completed this case, knowing that many roads did not publish these export rates, claiming they could not do it without embarrassment, and it did not proceed to enjoin or indict, but it called the carriers together and heard all they had to say, and wrote up the result, and here it is, and after finding that the law requires it and that the Commission has no discretion under the law to waive it, it concluded the case with this paragraph:

> Upon the whole, we are inclined to leave this matter as it is until opportunity has been afforded carriers to adjust their tariffs and arrangements, and, if so advised, present this matter to Congress; provided, however, that in the meantime all carriers that do not maintain export and import tariffs shall file with the Commission, as promptly as possible, a statement of the rates actually charged. It is evident there must be uniformity in the enforcement of these provisions of the act. One carrier can not be expected to publish and maintain its tariffs, while its competitor is relieved from that obligation. If the act is not amended within a reasonable time, it will be our duty to enforce it.

That remains that way to this day. That was done before the assembling of the last Congress—perhaps the early part of last year—and yet Mr. Hill comes in and tells you that the Commission created a condition which destroyed this foreign business on flour; and the Commission took the responsibility, in view of the embarrassment

that might arise in respect to this matter, and which had arisen, and knowing the fact that there was not a general compliance with this requirement of the law. Some rates were published and some were not, and it has presented the matter in that way and taken the responsibility of waiting to see what might be done before undertaking to create a hard condition.

Senator DOLLIVER. In other words, you practically suspended that part of the law?

Mr. CLEMENTS. We ignored that requirement of the law, which is a pretty serious responsibility for an administrative board to take upon itself, and we did it in the belief that there was a good reason which was presented, and it was not done secretly. It was put into a published report and the Congress was advised of it, and the reasons for it; and yet after all that has been done and that responsibility taken, in order to prevent the very thing that Mr. Hill says the Commission has enforced upon him, he comes here and says that the Commission created this condition.

Now, a good deal has been said in respect to certain cases that the Commission has disposed of. Professor Meyer, assistant professor of economics in the Chicago University, appeared before the committee a few days ago and gave testimony in which he referred to what is called the "Milk Case," which was decided by the Commission some years ago, and he brushed it aside as one of the very plain cases of incompetency and inefficiency on the part of the Commission, because there was one rate from any place within about 300 miles from New York on milk, and the complaint was made that it created an undue discrimination between the localities near by and those far away. The Commission heard the case, which was presented by able counsel, including Mr. Choate, who represented the milk dealers that were complaining, and the producers and dealers that were complaining of the discrimination, and able counsel on the other side, there being a thorough investigation, and the Commission held that there was a discrimination there in favor of the far-away points as against the near-by points and recommended a scale of rates which were higher for the far-off points than for the near-by points. That was the whole sum of that case.

The CHAIRMAN. Do you remember the adjustment now? Did you put it in zones?

Mr. CLEMENTS. We put it in zones.

The CHAIRMAN. Can you state now from memory how that is distributed over the 300 miles?

Mr. CLEMENTS. I can not from memory. I could file here the Commission's report and the specific finding and disposition of the case if desired.

The CHAIRMAN. Was there any appeal from that case?

Mr. CLEMENTS. No appeal.

The CHAIRMAN. It was acquiesced in?

Mr. CLEMENTS. Yes.

The CHAIRMAN. I wish you would, as a matter of information, because we have had this subject up before, file just what the findings were—that is, the rates—how many groups you made, and the rates.

Mr. CLEMENTS. If you will allow me, I will file the report of the Commission in that case.

The CHAIRMAN. Well, an extract from it.

Mr. CLEMENTS. Yes; we will do that.

Senator CULLOM. File what is strictly pertinent to your conclusion.

The CHAIRMAN. We do not want the whole report. There seems to be some confusion in the minds of the committee about it.

Senator DOLLIVER. There were several of these milk cases.

Mr. CLEMENTS. I think there were some others at other times.

Senator DOLLIVER. I read one of them where the decision seemed to be that the end-of-the-route men should have the same privilege as the near-by men.

Mr. CLEMENTS. I do not know what case you refer to.

Senator DOLLIVER. I think that was the first milk case. It is in one of the early reports of the Commission.

Mr. Commissioner KNAPP. That was one which was only 100 miles out.

Senator DOLLIVER. I think it was 200 miles.

Mr. Commissioner KNAPP. It may be; I do not remember about that.

Mr. CLEMENTS. I will have to look up the record about that, because I did not participate in that case. It was an earlier one than my connection with the Commission. I was with the Commission in this New York case, and this same assistant, Professor Meyers, finds fault with the fact that the Commission took in this blanket rate and split this up and said there was something connected with a man's geographical position which affected the matter of costs, and the considerations are set forth in the report. Yet it is brushed aside by this doctrinaire, who from his sanctum reads about rates in Germany and elsewhere without going over there to investigate the conditions or knowing anything about them in a practical way, and he is deemed a wise adviser here by these gentlemen who tell you that nobody knows anything about rates except them, and a man who knows about it must be in it all the time himself in a practical way. Yet here is this professor who said he had not been to Germany and he was discussing rates and conditions in Germany, which he said, he had read in reports, etc.

Then he referred to another case where the vegetable rates into the city from near-by points and far-away points were involved, and the Commission there decided there was some discrimination when the rate was the same, regardless of distance, when the distance was great; and he said that was a case in which one Mr. Ray complained to the Commission, and the Commission found error. Well, we have always supposed that one Mr. Ray, although he may be somewhat small in the eyes of the doctrinaire who promulgates theories for the Government of all conditions, still is entitled to his protection and his equal opportunities under the laws of the United States as we understand them. Then the professor said in substance that the Interstate Commerce Commission could never see anything except that the price of somebody's land was falling off, or that a mill which produces 50 barrels of flour a day was falling off in its production on account of some rates. Well, how is it possible for a man to answer such statements as this according to their folly? It has been said that aristocracy wherever it exists will always dictate

public sentiment. We have none in this country except as wealth creates distinctions of that sort.

Wealth always finds it is easy to employ men of theory and doctrine and ability to express its views, and they are often directed to educating the public up to the idea of the superior sanctity of vested rights as against individual rights and individual opportunities in the contests in which men engage in the different walks of life. It is ordinarily to be expected that these gentlemen would attack a doctrine or practice that was at variance to the doctrines dear to the patron saint of that institution whose colossal fortune had its inception and support to a large measure in the rebates in the early times of this business of Standard Oil, etc., which came like a mildew, like an overreaching cloud that leveled all competitors and gave the field to him, a position he still occupies. They employ not only able lawyers and other people to represent their views as a means of disseminating their doctrines, but they found colleges and institutions of learning that the younger generation may be taught the superior sanctity of vested rights and vested property.

Now, if the Interstate Commerce Commission should bring in here a professor who had never had anything to do with the practical affairs of railroads, how much would the railroads accept his views as sustaining the views of the Commission? Why, this must all be done by the practical men, they say, who have grown up with the business, who know, as nobody else does, who have the precise knowledge for regulating all these varying conditions from time to time, the cost of service, the cost of movements, the value of the service to the shipper, and the fluctuating interests manifested in competition. It requires a man who is constantly in the business, they say, who has done nothing else, who has all the exact knowledge to fix and arrange these things with a nicety, and perfect justice and equality between every man and every interest. Why, Mr. Chairman and gentlemen, no man has that. No railroad president has it; no railroad traffic man has it. Mr. Stickney is right when he says there is no such precise knowledge as that. There is none attainable. The most that can be done in an effort to do justice and equality in this matter is an approximation.

Is there any exact knowledge that enables a jury of twelve men to tell you exactly to a cent how much you are damaged in a case of tort or any other matter that becomes an issue? It is an estimate; it is the conscience; it is ordinary practical judgment and common sense applied to the facts—an effort to say what is right. That is the utmost that can be done in many of these matters. It is a false pretense that there is any such thing had or attainable as precise knowledge, which enables anybody to do these things with nicety or exact justice. Since this can not be done it is manifestly unjust that the shipper should make the rate for the railroads, because he is interested; but it is equally unjust, if the shipper has any right in the question, that he should have no voice, and that the other party at interest in respect to the matter should have the making of the rates without let or hindrance. The question is whether or not some disinterested tribunal upon conscience and upon oath and official responsibility shall determine that. I do not say that the Interstate Com-

merce Commission shall do it. Many times this Commission has called attention to the need of such a tribunal. It has more often suggested some public tribunal than it has ever said or suggested the Interstate Commerce Commission should do the same.

The law says the rates shall be reasonable and just. It has assumed that there is such a thing possible as an unreasonable rate, and it has made that unlawful. Not only the shippers, but other parties injured by a rate are authorized now to file a complaint alleging unlawfulness and extortion in rate. The law does not permit merely the Interstate Commerce Commission to investigate it, but it requires and demands it to report upon it, to report the facts and to report its conclusions. That assumes that there is such a thing possible as an unjust and unreasonable rate. It assumes that the shipper or the consumer or somebody besides the railroad has an interest in it, a lawful interest, a right to question, a right to put it in issue. Whereupon, if that be so, is it not an anomaly that in this particular business or matter one of the parties at interest shall determine what is right, and the other shall be left without any voice in the matter? What is asked for is that the shipper may have the right somewhere along the line to be heard in respect to this question in which he has a recognized lawful right.

Now, is there anything unreasonable, irrational, revolutionary, extreme about that? Are not the tribunals of the country open for the settlement of controversies by juries and by courts in respect to all other matters? What is there revolutionary about this? From time immemorial, in controversies in which the parties are at issue, and in which both have a right, the common law has stepped in and settled those controversies by outside parties. When you call a jury to settle a controversy between two parties you obtain a jury that knows the least about it, in order that it may be impartial. Is it impossible that a commission composed of five or seven men, one coming on at a time and going on in that way, shall attain that knowledge about these matters that would enable it, after it has heard both sides, to do as like tribunals do in other cases, and in all things to do what is approximately fair and reasonable and right, and do so without any hope that any tribunal, or any railroad man, or any shipper, or anybody else, can ever lay his finger on the precise amount that makes justice and equity between both parties, something which is not attainable? Is it impossible for a tribunal of that sort to take into account the varying conditions when presented by intelligent railroad men on one side and shippers on the other, to put all these facts together, and give them the same sort of consideration which, if it is not based on as full an experience as a railroad man obtains, will at least be the judgment of a party that is not interested in the matter?

Now, it is said for many reasons there is no need of any legislation. The first is because everything is all right anyway; that there is no cause of complaint, and that there is no complaint. Well, I will not waste any time on that. I suppose the Commission will not be charged with having misled the President of the United States. I suppose it will not be charged with having indulged in this outcry, this great clamor which has no foundation in fact or in justice. It is needless for me to argue that question. Mr. Hill found a rate that was 100 per cent too high. He did not tell us where it was.

The Commission has decided during the years it has been in existence about 400 formal complaints, and it has made orders in about 170 of those. It has dismissed or otherwise disposed of about 230. This includes the cases in which it found with the railroad as against the complainant, and some others have been in cases where the cause of complaint was removed either before the taking of the testimony or afterwards before the decision, and in various ways they went out. A large number of them are cases in which the Commission decided with the railroads. In the cases in which mandatory orders were made and complied with there are about 94. The number in which mandatory orders were partially complied with is 21; the number in which orders were disobeyed, 55; suits brought in court to enforce orders which were ignored, about 48.

Senator CULLOM. Those are all in addition to the cases where you settled them in an informal way?

Mr. CLEMENTS. Yes; these are simply the formal complaints where a petition has been filed and an answer made, and the Commission has heard the case, like a proceeding in court, and disposed of it. There are a number of other cases that have not proceeded that far that have been disposed of in one way or another and a number still pending, and it does not include in this about 2,300 informal complaints which have been made in the last five years, as set forth in our answer.

Senator CULLOM. Will you state whether in any of these cases you refer to that you disposed of in a formal way you attempted to settle them before proceedings were begun?

Mr. CLEMENTS. In a great many of these cases which became formal there was a correspondence and conference and an effort to adjust the matter before it took that shape. A great many of these cases which are in the answer we have made to your resolution showing about 2,300 informal cases disposed of in the last five years are cases which have been settled with correspondence without reaching the stage of a formal complaint.

The CHAIRMAN. You have been able to settle that many between the shippers and the carriers?

Mr. CLEMENTS. No.

The CHAIRMAN. Why, were not the 2,300 cases disposed of satisfactorily?

Mr. CLEMENTS. Not all satisfactorily. Let me tell you about that. That number includes those brought up by informal correspondence. Some of them grew into formal cases afterwards. A large number of those are overcharge matters where the rate can be settled—that is, when the complaint comes in it is referred to the auditor, who has his hand on the rates as they are published and filed, and he makes up a statement to see whether the rate charged was too much or not, and when he makes it he says what it ought to be, and when that is submitted to the carriers, if they find that there is no error in that, as they generally do, they accept it as the rate and promptly adjust the matter.

Now, a good many of these cases were cases where there was some controversy about classification or rate, and some of those were adjusted. A large number of them are, however, cases where there is some correspondence, and the matter is taken up in that way, and it is presented to the roads, and they see no way from their standpoint

to change the rates, and they decline to do so, and the shipper declines to file a formal complaint, and the matter is practically dropped, so that in many of these cases not all of them are by any means adjusted. They are adjusted or abandoned. Many of them are adjusted, however, and no doubt some of them are cases that are groundless. The Commission does not urge a man to make a formal complaint out of his informal complaint. He is left to determine the matter for himself, and the matter is often dropped at that. But I read these figures to show that there is no justification for the idea that is constantly brought forth in these hearings to the effect that the Commission has been in an attitude of unjust hostility.

Mr. Robbins, I think, the other day spoke of the hostility of the Commission to the car lines. Well, you know when I used to practice law down in north Georgia and to get around in the justice courts I used frequently to hear a man who was disappointed at something that the justice of the peace did—go out and curse the court, as we called it—whether the court was right or wrong. People do not like to lose their cases; people do not like to be disappointed, and people do not like to be investigated and to have facts, which they would rather not have made public, exposed; and it seems hardly just that because of these various matters there should be a disposition to criticise the Commission for what it has done and to turn this investigation as to what the law should be into a criticism and a complaint against the Commission on the part of these people because it has not enforced the law against them. That is a peculiar situation.

The CHAIRMAN. I desire to say that it is not necessary for you to come here and defend the Commission at all.

Mr. CLEMENTS. I am very glad to hear that. I could not know, of course, how that was. I saw it stated in the paper a few days ago that whatever else might be the result of these hearings, one thing was sure—that from the expressions of the committee the Commission would be severely condemned and criticised.

The CHAIRMAN. I hope that you do not believe all that you see in the newspapers.

Mr. CLEMENTS. No; and I would not believe the members of this committee capable of making up their minds about this matter and concluding so serious a result as that without hearing what we have to say, but it illustrates this, that there has been a continued attack day by day from very high sources, and these gentlemen, as Professor Meyer, of the Chicago University, said have greater imaginations than the poets. He thinks they have developed the world and the fullness thereof, and their imagination exceeds the imagination of the Grecians and the Romans in the palmiest days of mythology. Now, these are the gentlemen, and it is from their lofty standards, who have day by day testified to the incompetence of the Interstate Commerce Commission. I will not call it testimony. I still say that it is advocacy on the part of those employed on that side of the question. Do you expect them to come in here and court regulation? Did anybody ever court regulation? Do I think there is any law needed to restrain me from robbing you or otherwise injuring you?

We make laws to restrain others, not ourselves. Now, these gentlemen do not court regulation.

This question was up here for about ten years, and the Senator from Illinois (Mr. Cullom), at this end of the Capitol, and that distinguished, honest, strong friend of justice, Mr. Reagan, of Texas, at the other end of the Capitol, took an interest in the matter when it was up for about ten years. No doubt he remembers then that he heard the same cry—ruin, chaos, destruction, revolution, bankruptcy, widows and orphans that have these bonds and stocks, savings banks—all of them. I remember that it is thirty years ago when I happened to be a member of the legislature in Georgia, when there was a proposition then of a law creating a State railroad commission. We then heard the same thing, that there were to be no more railroads built in Georgia, and that that was to be the end; there was to be no development. The law, however, was passed, and it has been a law ever since, and there has been tenfold more authority delegated to the commission than this Commission has ever suggested, until to-day they make the classifications, have classified rates, and make the rates all over the State. One by one other States have done the same, and still there is hardly a road in the country to-day in the hands of the courts. They used to be at war and they would plunge and make rates that were ridiculous and destroy their revenues. They used to be in the hands of the courts more often than they are now.

I had a conversation with Mr. Peck, of Chicago, the other day, after he made his argument. I would say that he was a notable exception to this disposition to place his entire argument here upon the faults of the Commission, supposed or otherwise, and he argued like a lawyer the questions of law. After it was over he asked me if I had read his remarks. I said: "Yes; you did just exactly like you would do in a court-house; you did just like a defendant or anybody else would expect you to do. You are employed by the railroads, and you went there as an employee of the railroads to argue their side of the question." Now, did anybody expect him to do anything else? Did anybody expect him to go and state that his road needed regulation because it was charging too much or because it was paying rebates? Does anybody expect my friend Mr. Hines, as the lawyer of the Atlantic Coast Line, to come up here and tell you that the Atlantic Coast Line needs regulation? These gentlemen are not witnesses; they are advocates. I do not disparage what they say as men. I do not expect them to say anything except an argument against any regulation at all. That has always been so. But it is said that the interests of the railroads and the interests of the shipper are so bound up together that the carrier dare not do any wrong to the shipper because it would reflect against the carrier in its revenues. In other words, it is to the interest of the carrier to build up the interests of the shipper on its lines.

I concede that, and I concede further that the general policy of the roads is in that direction and to that end. It would be senseless to expect anything else; but because that is a general policy it does not follow that there are no cases of injustice, because some communities have a great deal more influence on the management than others

have, and when it is left to that sort of matter, to the self-interest of the carrier, there are some who can be heard, and others are perhaps too weak to be heard. It would be a great exaction on the time of these gentlemen if every single shipper in every little town and hamlet in the country could come in and be heard, but a great big chamber of commerce composed of capitalists can generally be heard almost any time. It would be an anomaly to say that in this business the rights of one party to the transaction should be left for protection to the interests of the other party. I do not know any other department of life, any other line of business, in which the public, the lawmaking power, leaves the interests of one party to a transaction of this sort solely to the protection of the self-interest of the other party. It would hardly be assumed to be a sound basis for the ascertainment and administration of justice anywhere else, and yet that is the proposition, that is the whole argument—that there can be no wrong on account of the common interests between the two—and it rests upon the assumption that the rightful and lawful interests of one party to the transaction can be left for its protection to the self-interest of the other party. Is that a sound proposition?

Now, these gentlemen, when they have been asked at the conclusion of their statements if they have any suggestions to make as to amendments to the law in the nature of such as would improve it have said, "Just push up the Interstate Commerce Commission a little and make them force us to obey the law as it is now and things will be better." Then they say it would help things if they were permitted under a law to agree upon rates and to maintain them, and that there need be no fear of an abuse of that. In that connection there has been some discussion of another decision by the Commission in respect to rates from Chicago and Cincinnati into the southeastern territory. That has been referred to as an example of what the Commission would do if it had the power to reduce rates complained of. In discussing that case it has been disclaimed, as I understand it, by Mr. Hines, that there was anything shown that indicated that there was a combination between the roads or a division of territory or a division of the business whereby the rates from these western centers to southeastern territory were kept up higher than they would have been under free competition. That, briefly stated, is what I understand to be his contention. In that respect he has discussed the case as a case of discrimination as between the Middle West and the East for business in the common territory of the South. In the statement of the matter he has referred to the fact that there was no pretense or claim that the rates from the Ohio River to this territory were unreasonably high.

Now, I have that case before me—just what the Commission did do, or what it undertook to do. This is the case out of which grew the maximum-rate decision of the Supreme Court. I will not take the time now to hunt it up, but in this there is a specific quotation from the complaint of the Chicago Board of Trade that these rates from the Ohio River to southeastern territory—say Atlanta, as a center—were unreasonably high. The complaint was twofold. The Cincinnati freight bureau complained that the rates were unjustly and unequally related with reference to eastern rates to that territory. The Chicago Board of Trade complained of the same thing, that the

rates from the Ohio River into that territory were unreasonably high. Both features were put into the complaint and the cases were consolidated, heard, and handled and disposed of together, and the Commission distinctly held that it could not undertake to make the rates on these roads from the Ohio River into southeastern territory a percentage of or base them in any way upon the rates from eastern cities to that territory, they being independent roads and independent lines, and one road should not fix the scale of rates for another territory.

It did not undertake to do any such thing as that, but it went back to the complaint that they were unreasonably high, and upon that, and that alone, the order was based. There was at that time an agreement between these roads binding them together under what was known as the Southern Railway and Steamship Association. I have a copy of the articles of agreement that were in force at the time this case was filed and heard. I do not desire to read extracts from that at length and take your time here, but since it has been disclaimed that there was any spirit of combination that affected these rates, and that there was nothing but the freest of competition, I think it is incumbent upon me to read somewhat from that agreement.

SEC. 2. For the mutual protection of the various interests and for the purpose of securing the greatest amount of net revenue to all the companies, parties to this agreement, it is agreed——

Senator DOLLIVER. What is the date of that?

Mr. CLEMENTS. This agreement was made on the 4th day of January, 1892. [Continues reading:]

It is agreed that what are termed "western lines" shall protect the revenue derived from transportation by what are known as "eastern lines" with the rates as fixed by this association, so far as can be done by the exaction of local rates, and that eastern lines shall in a like manner protect like revenue of western lines.

Then section 2 of article 23 reads as follows:

It is distinctly understood and agreed that the maintenance of rates as established under the rules of the association is of the very essence of this agreement, and the parties hereto pledge themselves to require all their connections to maintain such rates, and in the event of any company or line or its connections not members of the association failing to conform to this obligation, the other parties in interest pledged themselves to increase their proportion of through rates sufficiently to protect the authorized rate whenever required by the commission to do so—

That meant the officer of this association and commission. [Continues reading:]

provided that in no case shall any company be required to charge more than the published local rates.

Then here is a division of territory, a line drawn from Buffalo by way of Pittsburg, Salamanca, and some other place in the north, with a specific stipulation among these roads in this signed agreement that traffic originating west of that line should not be carried by the roads in the East and delivered in the Southeast west of a line that was there set out, from Chattanooga to Montgomery and other places, perhaps. I am not sure about the line, but there was a line in the South and one in the North, and an obligation in this agreement that the eastern roads should not reach over and take

business west of that line in the North for delivery in the South, west of the line down there, and that the western roads should not reach east of that line in the North for business east of that other line in the South. It is all set out here.

Senator DOLLIVER. Now, was that the first agreement?

Mr. CLEMENTS. No, sir; there had been other agreements before.

Senator DOLLIVER. What was the date of the earliest agreement as to that division of southern business?

Mr. CLEMENTS. I can not tell. Of course the date is set out somewhere in this report.

Senator DOLLIVER. I got an impression it was about as far back as 1870.

Mr. CLEMENTS. They came together in 1870 or 1871. That is set out here. Mr. Peck was then presiding over their deliberations when they met.

Senator DOLLIVER. Was it your intention to have the report printed?

Mr. CLEMENTS. I would be glad to have it printed here.

Senator DOLLIVER. We will be glad to have it included.

Mr. CLEMENTS. Because it sets forth these facts just as they are.

The agreement referred to is as follows:

The Southern Railway and Steamship Association—Agreement.

This agreement, made this 14th day of January, A. D. 1892, by the parties whose signatures are hereto attached, witnesseth that—

Objects of the association.

Whereas the establishment and maintenance of tariffs of uniform rates to prevent unjust discrimination such as necessarily arises from the irregular and fluctuating rates which inevitably attend the separate and independent action of transportation lines is important for the protection of the public; and

Whereas it is deemed to be the mutual advantage of the public and the transportation companies that business in which they have a common interest should be so conducted as to secure a proper correlation of rates, such as will protect the interests of competing markets without unjust discrimination in favor of or against any city or section; and

Whereas these objects can be attained by the cooperation on the part of the various transportation lines engaged in the traffic of the territory south of the Potomac and Ohio rivers and east of the Mississippi River; and

To be attained by cooperation.

Whereas such cooperation is absolutely necessary to a strict compliance with the act of Congress entitled "An act to regulate commerce:"

Now, therefore, in order to secure such cooperation among the said transportation lines and to provide means for the prompt adjustment of the differences which may arise between them by placing the conduct of all the traffic common to two or more companies under well-de-

fined rules and regulations which will insure the maintenance of rates, it is mutually agreed as follows:

ARTICLE FIRST.

SECTION 1. The association herein formed shall continue to be styled "The Southern Railway and Steamship Association." **Title of association.**

ARTICLE SECOND.

SECTION 1. The traffic subject to this agreement shall be (*a*) all business for which two or more of the parties hereto compete, having origin and destination within the territory of this association—that is, south of the Virginias and south of the Ohio River and east of the Mississippi River, and (*b*) all traffic between territory on or north of the southern boundaries of the Virginias and on or north of the Ohio River and west of the Mississippi River, and the territory south of such south boundary of the Virginias and the Ohio River and east of the Mississippi River, except that traffic to or from a local point on any line shall be considered local to that line, and so far as that line may be concerned shall not be subject to this agreement, and further except that traffic between points on the Ohio and Mississippi rivers or between points on the Ohio and Mississippi rivers and points north of the Ohio and west of the Mississippi River shall not be subject to this agreement. **Territorial limit for lines which may be included.** **Traffic covered by this agreement.**

SEC. 2. For the mutual protection of the various interests and for the purpose of securing the greatest amount of net revenue to all the companies parties to this agreement, it is agreed that what are termed western lines shall protect the revenue derived from transportation by what are known as eastern lines, under the rates as fixed by this association, so far as can be done by the exaction of local rates, and that eastern lines shall in like manner protect like revenue of western lines. **Methods of mutual protection to eastern and western lines.**

SEC. 3. That a line from Buffalo through Salamanca, Pittsburg, Wheeling, and Parkersburg, to Huntington, W. Va., be made the dividing line between eastern and western lines for the territory hereinafter outlined. That the western lines shall not make joint rates from points east of that line for any points east of a line drawn from Chattanooga through Birmingham, Selma, and Montgomery to Pensacola. **Eastern and western territories respectively defined.**

SEC. 4. The eastern lines, including the Richmond and Danville Railroad via Strasburg or points east of Strasburg, and the East Tennessee, Virginia and Georgia Railway via Bristol, shall not make joint rates on traffic from points west of that line (Buffalo, etc.), to any points on or west of a line drawn from Chattanooga through Athens, Augusta, and Macon to Liveoak, Fla.

SEC. 5. The traffic from Buffalo through Salamanca,

Pittsburg, Wheeling, and Parkersburg to Huntington, W. Va., and points on that line to and east of Chattanooga, Calera, and Selma shall be carried by either the eastern or western lines only at such rates as may be agreed upon.

Cooperation between eastern and western lines promised.

SEC. 6. It is understood that the eastern and western lines will cooperate in the enforcement of the third and fourth section of this second article.

ARTICLE THIRD.

Time and place for holding conventions.

SECTION 1. The representatives of the several companies, members of the association, shall meet in convention annually on the second Wednesday in June, in the city of New York, or at such other place as may be mutually agreed upon, and special meetings may be called at any time as hereinafter provided.

ARTICLE FOURTH.

Business of conventions.

SECTION 1. The business to be transacted in general convention shall be confined to the election of officers, fixing their salaries, the representation of members on the executive board, and the adjustment of such matters as can not be properly determined by the executive board with the aid of the board of arbitration. Each company a member of the association shall have one vote. Two-thirds of the whole vote of the members present shall be required to make the action of the convention binding. Companies members of the association may be represented in the convention by the president, vice-president, general manager, traffic manager, superintendent, or general freight agent, in person or in proxy, provided such proxy presents to the secretary a properly attested power of attorney. In case of more than one nomination being made for any office the election shall be by ballot.

ARTICLE FIFTH.

Officers of association.

SECTION 1. The following officers shall be elected at the annual meeting, and shall hold their office until the next annual meeting, and thereafter until their successors are elected. A president, a commissioner, a secretary, and three arbitrators.

Vacancy in elective office.

SEC. 2. In the event of a vacancy occurring in any elective office the president may fill the vacancy until a general meeting can be convened to elect a successor, and such meeting shall be called by the president within twenty days after the vacancy occurs.

ARTICLE SIXTH.

Lines represented on the executive board.

SECTION 1. The East Tennessee, Virginia and Georgia Railway; Norfolk and Western Railroad; Richmond and

Danville Railroad; Seaboard and Roanoke Railroad; Central Railroad of Georgia; Georgia Railroad; Western and Atlantic Railroad; Wilmington and Weldon Railroad; Atlanta and West Point Railroad, and Western Railway of Alabama; Savannah, Florida and Western Railway; Old Dominion Steamship Company; Ocean Steamship Company; Merchants and Miners' Transportation Company; Cape Fear and Yadkin Valley Railway; Cincinnati, New Orleans and Texas Pacific Railway; Illinois Central Railroad; Kansas City, Memphis and Birmingham Railroad; Louisville, New Orleans and Texas Railway; Louisville and Nashville Railroad; Mobile and Ohio Railroad; Nashville, Chattanooga and St. Louis Railway, and Newport News and Mississippi Valley Company shall each designate a representative, who shall be authorized to represent them in matters of business with the association or its members. The several representatives so designated and such other representatives of members of the association as may be designated by the executive board shall constitute the executive board, of which the commissioner shall be chairman. If any company or line which is entitled to a representative fails to appoint one, or if their representatives be not present at any meeting of the executive board, such company or line shall be represented by the commissioner.

ARTICLE SEVENTH.

Meetings of executive board.

SECTION 1. The executive board shall meet at the call of the commissioner whenever and wherever in his judgment it is necessary, or when any three members of the board request it; but all such calls must state the object of the meeting and the subject to be acted upon by the board.

Commissioner shall represent absent members.

All absent members shall be represented by the commissioner, whose duty it shall be to make himself familiar with their views and interests, so that he can represent them properly; and votes cast by the commissioner for absent members, at any meeting, on any subject stated in the call, shall have the same force and effect in binding such members as if cast by them in person. Other subjects than those mentioned in the call may be considered and acted upon in the meeting of the executive board, but the assent of the absent members must be obtained, or a decision of the board of arbitration, before such action becomes binding upon them.

Jurisdiction of executive board.

The executive board shall have jurisdiction over all matters relating to the traffic covered by this agreement but shall act only by unanimous consent of all its members. In the event of failure to agree, the questions at issue shall be settled by the board of arbitration as hereinafter provided for.

SEC. 2. The principle of apportionment of business subject to arbitration shall be recognized in the operation of the association so far as this can be lawfully done.

ARTICLE EIGHTH.

Executive board may appoint rate committees and other subcommittees.

SECTION 1. The executive board shall have the right at their discretion to appoint rate committees and other subcommittees, either of their own number or from among the officers and agents of the companies members of the association, and to delegate to such subcommittees jurisdiction over such matters as may be specially committed to their charge.

Authority of rate committee.

With a view of a proper relative adjustment of all rates, and especially a proper relative adjustment of rate on similar articles from the East and West to common territory, the rate committees shall have sole authority to make all rates and classification on all traffic covered by this agreement, subject to decision of the commissioner, the executive board, or board of arbitration, as hereinafter provided in case such rate committees can not agree; but if the rate committee shall fail or omit to make rates on any traffic covered by this agreement, the commissioner shall have authority to make such rates, it being the intention that there shall be properly authenticated tariffs of rates on all such traffic.

Commissioner authorized to make rates.

Subcommittees shall act by unanimous consent.

SEC. 2. Subcommittees shall only act by unanimous consent, and in failing to agree the questions at issue may upon demand of any member, be referred to the executive board for action at their next meeting, or the votes of members of the executive board may be taken separately and apart by correspondence, and such questions may be submitted direct to the board of arbitration when so authorized by a majority of the executive board.

Commissioner shall be ex-officio chairman of all subcommittees and shall represent absent members.

SEC. 3. The commissioner shall be ex-officio chairman of subcommittee, and as such shall be the medium of communication between the subcommittees and the executive board. Absent members of subcommittees shall be represented by the commissioner, as in case of absent members of the executive board.

Commissioner shall have authority to decide temporarily questions on which subcommittees fail to agree.

During the interim between the reference of any matter of difference from a subcommittee to the executive board and the final determination of such matter the commissioner, if he deem it a matter requiring prompt action, shall have authority to decide it temporarily, and his decision shall be binding on all parties until reversed by the executive board or by arbitration.

ARTICLE NINTH.

Executive board authorized to make rules and regulations.

SECTION 1. The executive board shall have authority to make from time to time such rules and regulations, not inconsistent with this agreement, as may be necessary to secure a systematic conduct of the affairs of the association and obtain the objects for which it is formed.

ARTICLE TENTH.

Duties of the president.

SECTION 1. The president shall preside over all general meetings of the association, certify to the record of such

meetings, and communicate the proceedings to all members. He shall call a general meeting of the association whenever he is requested to do so by three members of the executive board, or whenever it is, in his judgment, necessary.

ARTICLE ELEVENTH.

Duties of the board of arbitration.

SECTION 1. The board of arbitration shall hear and determine all questions which may be submitted to them under this agreement or by consent of the parties, and the decisions of the said board of arbitration shall be final and conclusive.

ARTICLE TWELFTH.

Duties of the secretary.

SECTION 1. The secretary shall make complete and accurate records of the proceedings of all general meetings of the association, the originals of which shall be preserved in the general office of the association, and copies furnished to each member. He shall act as secretary also to the board of arbitration, to the executive board, and to all committees herein provided for, and preserve similar records of their proceedings, and perform such other duty as may be assigned him by the commissioner.

ARTICLE THIRTEENTH.

Duties of the commissioner.

SECTION 1. The commissioner shall be the chief executive officer of the association, and as a representative of its members, both severally and jointly, shall act for them in all matters which come within the jurisdiction of the association in conformity with the requirements of this contract and the instructions of the executive board and committees herein provided for, but exercising his discretion in all cases which are not provided for either by this agreement or by the executive board and committees acting under its authority and sanction. When directed by the executive board the commissioner shall also take charge of reports and claims and appoint such clerks and claim agents as may be necessary, and charge up the expense to the roads interested in the business on an equitable basis, managing the business for the benefit and at the cost of the companies interested. He shall also have authority to reduce the rates when necessary to meet the competition of lines or roads not parties to this agreement, and he may at the same time make corresponding reductions from other points from which relative rates are made. He shall have such authority over the traffic officers and their subordinates and over the accounting departments of the parties hereto as may be necessary to enforce the terms of this contract relative to the maintenance of rates, and to require information relating to the traffic to be furnished to him in such form or manner as

he may deem necessary. He shall have access either in person or by deputy to the books, papers, correspondence, etc., of any of the officers, agents, or employees of the parties hereto that relate to the freight traffic covered by this agreement.

ARTICLE FOURTEENTH.

Accounts of traffic to be kept by commissioner.

SECTION 1. The commissioner shall keep such accounts of the traffic covered by this agreement and make such reports of the same as may be directed by the executive board.

ARTICLE FIFTEENTH.

Disbursements of funds.

SECTION 1. All disbursements of the funds of the association shall be made by the commissioner, who shall give bond, with security, in such amount as shall be satisfactory to the executive board, that he will duly and properly account for all moneys of the association or belonging to members thereof, which may in any manner come into his possession or under his control. No payments shall be made except on properly receipted vouchers, which shall be held subject to inspection by the executive board or such person or persons as may be appointed by them for that purpose.

ARTICLE SIXTEENTH.

Deposits to pay fines.

SECTION 1. In order to provide for the prompt payment of any fines that may be assessed against any member of this association for violating rules, each company shall deposit with the commissioner an amount equivalent to $5 for each mile of the road operated by said company under the provisions of this agreement, or, in case where a company operates a water line, $5 for each mile allowed as a prorating distance in the decision of through rates, provided such amounts shall not exceed in the aggregate the sum of $5,000 for any one company; but in all cases where fines are assessed the commissioner is hereby authorized to draw at sight on the parties against whom such fines are assessed for the full amount of said fines, and each company party to this agreement hereby binds himself to promptly pay such drafts, it being the intent and meaning of this section that the deposit herein provided for shall not be diminished by reason of the payment of any fines that may be assessed against a company making such deposit.

ARTICLE SEVENTEENTH.

Commissioner to be furnished with copies of manifests.

SECTION 1. The commissioner shall be furnished with copies of all manifests for traffic covered by this agreement, such copies to be forwarded at the time the ship-

ments to which they appertain are made, and shall show the original shipping point and through rates, and also the divisions thereof, so far as such divisions are controlled by this agreement, and abstracts of such manifests shall be furnished to the commissioner at the expiration of each month; but it is understood that the members of the association shall not have access to any of such manifests or be furnished with the names of consignors or consignees. The tonnage books of every company in the association shall be open at all times to the inspection of the commissioner or such agent as he may from time to time appoint, for the purpose of enabling him to get a complete record of all traffic covered by this agreement.

ARTICLE EIGHTEENTH.

SECTION 1. Copies of all rates that may be from time to time agreed upon or fixed in the manner provided shall be furnished promptly to the auditors and other officers of the parties to this contract, and they shall see that the rates are enforced in conformity therewith and that no variations are made from such rates or manifests by voucher or otherwise.

Copies of rates to be sent to officers or members.

ARTICLE NINETEENTH.

SECTION 1. That all-rail rates to and from the ports of Boston, Providence, New York, Philadelphia, and Baltimore to points within the territory as covered by this agreement shall be higher than the rates by water or combined water and rail lines by the present differentials, as established by the board of arbitration July 19, 1889, and subject to the Southern Railway and Steamship Association classification.

All-rail rates.

SEC. 2. Water lines or combined water and rail lines may insure against marine risks by issuing insured bills of lading between the above-named ports and points within the territory covered by this agreement, they giving two weeks' written notice to the commissioner, naming the points to which they will issue insured bills of lading.

Water lines or combined water and rail lines may insure against marine risks.

SEC. 3. No water line or combined water and rail line shall assume the cost of insurance against marine risk in any other manner than herein provided for, viz, by the issue of insured bills of lading. It is, however, distinctly understood and agreed that no reduction of the established tariff rates, rebates, or consideration of any kind shall be given or offered to influence shippers or to secure their preference for any road or line.

Cost of marine risk to be assumed only by the issue of insured bills of lading.

SEC. 4. The above-named differentials as between all-rail lines and water or combined water and rail lines shall not be changed except by arbitration, which may at any time be called for by any party to this agreement.

All-rail differentials shall not be changed except by arbitration.

SEC. 5. The present insurance clause shall remain in

force until the business shall have been apportioned and after such apportionment has been made effective, then the insurance clause as amended by the majority report of the committee on revision shall be substituted therefor.

ARTICLE TWENTIETH.

Rates to and from interior eastern points.

SECTION 1. The parties to this agreement who control all-rail lines through Alexandria, Hagerstown, Richmond, or Norfolk agree to protect the water lines or combined water and rail lines upon the basis of the above-named differentials, or such other differentials as may be fixed by arbitration in making rates between points in the territory covered by this agreement and all interior points in the Northern and Eastern States east of the territorial line above mentioned.

SEC. 2. It is agreed that rates made to points reached by lines via Cincinnati or Louisville not members of this association may become the rates of all association lines.

SEC. 3. It is also agreed that in cases where a combination of locals to and from interior points by rail lines make lower totals than the established water lines port rates plus differentials, the rate may be by all lines the lowest combination, but shall not be less than such combination.

SEC. 4. In all cases changes of rates made under above provisions shall be made by the rate committees or the commissioner, who shall promptly notify all parties interested.

ARTICLE TWENTY-FIRST.

Reports of tonnage and revenue to commissioner.

SECTION 1. The executive board shall organize such a system for the rendition of tonnage and revenue reports of traffic covered by this agreement as shall enable the commissioner to be at all times fully informed of the movements thereof and the observance of rates established therefor, in order that he may detect promptly any violation of rates and keep each company or line informed of the action of the other companies or lines. For these purposes the executive board at their discretion may appoint agents to examine the books of the members of the association and inspectors of the weights and classifications, who shall at all times have access to and be permitted to examine goods. Any losses or damages resulting to initial carrier from the opening of packages by inspectors shall be prorated on the basis of revenue. The expense of such agents and inspectors shall be distributed among the members as hereinafter set forth. Tonnage and revenue statements shall be rendered monthly to each member of the association, and also annually on the 30th day of April in a report to be made by the commissioner at the expiration of each year

and distributed to the members at least two weeks before the annual meeting.

ARTICLE TWENTY-SECOND.

Differences referred to arbitration.

SECTION 1. All measures necessary to carry out the purpose of this agreement shall be taken jointly by the parties hereto; and should any question arise upon which they can not agree in relation to the terms of this contract, or to any matter arising thereunder, it shall be decided by arbitration as herein provided, it being one of the fundamental principles of this contract that no party shall take separate action in any matter affecting the interest of one or more of the other parties contrary to the spirit and intent of this contract, and that all differences relating to the establishment, adjustment, and maintenance of rates upon the traffic covered by this contract shall be adjusted by arbitration.

ARTICLE TWENTY-THIRD.

SECTION 1. Whenever rates have been fixed by the rate committees, the commissioner, the executive board, or by arbitration there shall be no reduction from such rates without the consent of the commissioner. No member of the association shall reduce such rates, directly or indirectly, by any special rate, rebate, or drawback, or by payment of commissions, or by reductions on manifests, or by combinations of local rates, or by rebilling, or by underbilling weights, or by any consideration in the way of free transportation, or in any manner, or by any device whatsoever.

Lines to advance proportions in case of cut rates.

SEC. 2. It is distinctly understood and agreed that the maintenance of rates as established under the rules of the association is of the very essence of this agreement, and the parties hereto pledge themselves to require all their connections to maintain such rates, and in the event of any company or line, or its connections, not members of the association, failing to conform to this obligation, the other parties in interest pledge themselves to increase their proportions of through rates sufficiently to protect the authorized rate whenever required by the commissioner to do so: *Provided*, That in no case shall any company be required to charge more than its published local rates.

Violations to be reported to board of arbitration.

SEC. 3. Whenever the commissioner shall have reason to believe that the rates established under the rules of the association are not being fully maintained by any line or company, member of the association, it shall be his duty to make a full investigation of the facts in such case, and if in his judgment there has been any violation of this agreement on the part of any member or members of this association which he can not properly correct, he shall submit the evidence in such case to the board of arbitra-

force until the business shall have been apportioned and after such apportionment has been made effective, then the insurance clause as amended by the majority report of the committee on revision shall be substituted therefor.

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Violations to be reported to board of arbitration.

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tion; and if the board of arbitration shall find, after a full hearing of the case, that any member is guilty of violating this agreement, it shall impose such penalties therefor as it may deem proper and necessary to secure the maintenance of the rules of this association. The commissioner shall enforce such penalties, making use, if necessary, of the fund provided for this purpose. Any surplus over and above the amount that may be awarded by the board of arbitration to indemnify any members for losses sustained shall be applied to the payment of the expenses of the association.

Board of arbitration to make its rules.

SEC. 4. The board of arbitration shall from time to time make or amend rules of procedure for the trial of such cases, and the submission of arguments in cases referred to it for decision, as it may deem proper.

ARTICLE TWENTY-FOURTH.

SECTION 1. In order to defray the expense of the association, there shall be first assessed annually on each member thereof a tax of $300, which shall be applied to paying salaries of general officers and toward general expenses, such as office rent, printing, etc.; and such additional amount may be assessed on members pro rata, according to their gross revenue derived from the traffic covered by this agreement, as may be necessary to meet these and all other expenses of the association.

ARTICLE TWENTY-FIFTH.

Duration of agreement.

SECTION 1. This contract takes effect the 14th day of January, 1892, and shall terminate on the 31st day of July, 1892, and the fiscal year of the association shall terminate on the 30th day of April, 1892.

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY,
By HENRY FINK, *Vice-President.*
ILLINOIS CENTRAL RAILROAD,
By J. T. HARAHAN, *Second Vice-President.*
LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY,
By E. W. HOW, *Traffic Manager.*
MOBILE AND OHIO RAILROAD COMPANY,
By J. C. CLARKE, *President.*
LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
By S. R. KNOTT, *First Vice-President.*
MEMPHIS AND CHARLESTON RAILROAD COMPANY,
By HENRY FINK, *Vice-President.*
ALABAMA GREAT SOUTHERN RAILROAD COMPANY,
By HENRY FINK, *Vice-President.*
GEORGIA PACIFIC RAILROAD,
By SOL. HAAS, *Traffic Manager.*
EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY,
By HENRY FINK, *Vice-President.*
OLD DOMINION STEAMSHIP COMPANY,
By W. L. GUILLAUDEU, *Traffic Manager.*

MERCHANTS' AND MINERS' TRANSPORTATION COMPANY,
By J. C. WHITNEY, *Traffic Manager.*
SEABOARD AND ROANOKE RAILROAD COMPANY,
By O. V. SMITH, *Traffic Manager.*
NORFOLK AND WESTERN RAILROAD COMPANY,
By CHARLES G. EDDY, *Vice-President.*
RICHMOND AND DANVILLE RAILROAD COMPANY,
CENTRAL RAILROAD OF GEORGIA, including PORT ROYAL AND AUGUSTA,
By SOL. HAAS, *Traffic Manager.*
The ATLANTA AND WEST POINT RAILROAD COMPANY and WESTERN RAILWAY OF ALABAMA,
By C. H. PHINIZY, *President.*
The GEORGIA RAILROAD,
By C. H. PHINIZY, *Acting General Manager.*
The WILMINGTON AND WELDON RAILROAD COMPANY,
By H. WALTERS, *Vice-President.*
The SAVANNAH, FLORIDA AND WESTERN RAILWAY COMPANY,
By H. S. HAINES, *Vice-President.*
CAPE FEAR AND YADKIN VALLEY RAILWAY COMPANY,
By J. W. FRYE, *General Manager.*
The BALTIMORE STEAM PACKET COMPANY,
By R. L. POOR, *General Freight Agent.*
The OCEAN STEAMSHIP COMPANY of Savannah,
By G. M. SORREL, *Manager.*
The NEWPORT NEWS AND MISSISSIPPI VALLEY COMPANY (W. D.),
By E. W. HOW, *Traffic Manager.*
GEORGIA SOUTHERN AND FLORIDA RAILROAD,
By A. C. KNAPP, *Traffic Manager.*
NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY and WESTERN AND ATLANTIC RAILROAD,
By J. W. THOMAS, *President.*
KANSAS CITY, MEMPHIS AND BIRMINGHAM RAILROAD COMPANY,
By GEO. H. NETTLETON, *President.*
The BALTIMORE, CHESAPEAKE AND RICHMOND STEAMBOAT COMPANY,
By REUBEN FOSTER, *Vice-President.*

Senator NEWLANDS. What is the title of those articles which you read?

Mr. CLEMENTS. The Southern Railway and Steamship Association agreement, dated the 14th day of January, 1892. It was openly stated in the earlier part of these conferences, which is a part of the history of this whole transaction, these agreements were supposed to be made once a year and renewed every year. When the first one was made in specific form I do not know. There was no law then against pooling and these things, and subsequent agreements to this, one or two, had penalties, fines, and forfeitures to be paid in. They were to be paid in in advance, so that if any road violated any of these rules there would be money in the treasury belonging to it, so that the commissioner could apply it to the penalty and as a fine, so as to enforce the observance of these rules and regulations. It was clearly

to distribute the business. Mr. Peck, who was presiding over the early conference, out of which all this business grew, said in substance that there ought to be about 10 cents greater rate on the manufactured goods from the West and about the same difference, perhaps, on other heavier and coarser goods that were then common and peculiar to the West. There was no disguising the fact that the rates were made relatively between these eastern roads and western roads for the purpose of getting the greatest amount of net revenue to the parties to this agreement out of the business, and to that end these lines were made so that the eastern goods would be carried into the South by western roads and western goods into the South by eastern roads. Now, Mr. Hines said the other day that was done in order to avoid this absurd movement away around from the West to the Atlantic Ocean and then down South.

Senator DOLLIVER. That was Mr. Ripley, I think, who made some such statement as that.

Mr. CLEMENTS. That is only another way of saying it was to bridle and limit the competition between these carriers; that there must have been some roads that were willing to do that in order to get a part of the business. Otherwise it would not have been necessary to bridle them and keep them from it. That is self-evident.

Now, something was said a few days ago here in an incidental way of the acquisition of the Louisville and Nashville road by the Atlantic Coast Line. It was said that it was not contrary to the policy of any law because they were not in any sense competitive; that they were too far apart and served different territories. And yet there was this very rule that it was found necessary to put in here to keep the eastern roads from trying to participate in part of the business of the West, and that was peculiar to the West, to carry it around that way, and for what purpose?

All this was for the purpose of enabling the parties to get the greatest amount of net revenue out of the business. They must not cut one another's throat. Roundabout roads must not do such things as that, as it has a tendency to reduce rates. They went to the extent of requiring parties to this agreement to exact their full locals against connections which did not adhere to all of these rules. Not that the connection be allowed to do as it pleased and take less than a local, but it must not be allowed to do it under these bristling penalties to prevent that desired movement and distribution of the business and lowering of rates, which would prevent the obtaining of the greatest net revenue to the parties. Now, inasmuch as this has been discussed, although it was decided distinctly on one allegation which was investigated that the rates were unreasonably high and went off on that, it has been discussed here as a matter of comparative rates from the East and from the West into that territory, and some interesting testimony was presented in that case by letters and by commissions of some of the railroads. Mr. S. S. Knott, then traffic manager of the Louisville and Nashville Railroad, in a letter to Mr. J. J. Grammar, dated April 14, 1890, wrote that—

> While the adjustments may be unfair, as we think it is—
>
> He was then talking about the existing adjustments—
>
> yet it can hardly be said to be arbitrary or wholly unreasonable—

And that his company, together with other lines interested in western traffic, who were members of the Southern Railway and Steamship Association, urged a modification of the difference between eastern and western rates, and succeeded in having the matter brought under the rules of the association and before the board of arbitration.

They had a board of arbitration to settle these matters, and the question was fully presented from both sides of the case, and the decision of the board at the time—May, 1888—was that the best protection of all interests did not warrant the change in the adjustment of rates, which they, in common with the other western lines, had requested—that is, changing the adjustment from the Ohio River points and points north, as compared with the rates from the eastern cities. Mr. B. E. Hand, assistant general freight agent of the Michigan Central Railroad, stated that he had made repeated efforts with railroads operating in southern territory for a reduction of rates on manufactures from the West to the Southeast. Mr. J. J. Grammer, of the Central Traffic Association committee on relations with southern roads, in a letter to N. J. Eickelhardt, of April 2, 1890, who was at the head of this Chicago freight bureau at that time, said:

> All our efforts thus far have been unavailing to more justly equalize the rate. You doubtless understand the southern road rates from the Ohio River are arbitrary, their rates being from 50 to 100 per cent greater per mile than on the lines north of the river on similar traffic.

In a letter dated April 8, 1890, to Mr. S. S. Knott, he says:

> The injustice of the present basis of rates from the Ohio River must of necessity be apparent.

But now, these were railroad men—traffic men—men who have a precise knowledge of what is right and what can be done and what ought to be done. These were their letters. They were bound up—some of them, not all of them—but Mr. Knott represented the Louisville and Nashville Railroad, and they were bound by this agreement, and when they wanted to rearrange this adjustment they had to bring it to the arbitration board made by that agreement, and then they had to abide by what it did.

Senator KEAN. That man Eickelhardt was not a traffic manager, was he?

Mr. CLEMENTS. He was the traffic manager of the freight bureau. And then he represented the shipping interests. That was what they called them at the time. He was at the head of what they called "the freight bureau of Chicago," which was a body representing the shippers—the same board of shippers that made this complaint. I think this agreement by its terms fully answers all that has been said here about there being no adjustment of rates there on any basis of free competition or on any basis which did not undertake to distribute that traffic. The way it was done was with the rates on the classes. The classes 1, 2, 3, 4, 5, and 6 of the official classification territory, which applied from the eastern territory to the South, were made comparatively low with respect to the same classes from Cincinnati and Chicago to the same southeastern territory. They did not say anything about manufactured goods, the rates being adjusted with reference to manufactured goods in one part of the territory, but the class tariffs were made lower relatively from the

East than from the West, and it happened that these high-class goods imported and manufactured in this country fall into the classes. Now, a good deal has been said here and we have been drawn into a discussion of some actual cases he then handled. One was a recent case, namely, the Lumber Case.

Senator DOLLIVER. Did you intend to return to this Maximum Rate Case any further?

Mr. CLEMENTS. Perhaps not, unless there is some question about it.

Senator DOLLIVER. If the chairman will permit me, I would like to ask you a few questions about that, referring to Mr. Hines's testimony.

Mr. CLEMENTS. Yes; I will be glad to answer.

Senator DOLLIVER. The impression which Mr. Hines sought to make, I think, was that the order in that case was so comprehensive as to practically fix innumerable rates, and in its practical operation to disturb about as many commercial conditions north of the Ohio River and south as it settled. For instance, I recollect that he suggested that Chicago and Cincinnati went in together in a fight against New York, and that by the order of the Commission Cincinnati won out as against New York, but lost vastly by the order of the Commission on account of changes made in the Chicago rate, although no testimony had been taken, and there was no controversy between Cincinnati and Chicago. Also that two cities in Georgia, situated, I think, as Atlanta and Rome are, which for many years have had a perfectly satisfactory adjustment of rates from the Ohio River, found themselves at the end of that controversy, to which they were not a party, disturbed in their adjustment, Rome getting a differential of 7 cents against Atlanta.

Mr. CLEMENTS. How much?

Senator DOLLIVER. I think he said 7 cents in a hundred; and he gave that as only one of several disturbances of fixed commercial relations, which, had the order ever gone into effect, would have created an insurrection down in that section of the country.

Mr. CLEMENTS. I am glad, Senator, that you asked me that question, because I had intended to refer to that argument, and for the moment I had passed away from it.

Senator DOLLIVER. I confess, Judge Clements, I was more interested in the account of how far-reaching the order was in that case and how far it justifies the complaint which has been lodged here that this power of which we are considering the propriety would, in fact, be the power of general fixing of the rates. In other words, that the complaint could be so enlarged as to completely cover the whole commercial territory.

Mr. CLEMENTS. The order in that case did undertake to deal with all classes of rates from Cincinnati and Ohio River points to the basing point in this southeastern territory, which was covered by the complaint, including Atlanta, Rome, Anderson, and several other places, and including Meridian, Miss. The complaint was that these rates were unreasonably high and that they were unduly favorable on the class goods to the eastern roads. We disposed of that last question, as I have told you, upon the idea that the western roads should not have their rates made by the eastern roads; that while you could deal with lines that made up one system, the differences which made discriminations that way, there was no power in the

Commission to say that because a road leading from the East into the Southeast wanted to make a low rate, therefore a road leading from Chicago into some point in the South, wholly independent, should make a rate based upon that, except as a comparison might afford some basis for arriving at what was a reasonable rate. The complaint was, as you have stated, from these Ohio River points, particularly Cincinnati, to southeastern territory. It was only from Cincinnati, but of course it affected the Ohio River points and others as well.

The CHAIRMAN. The Commission's rates in that case were lower from Rome than from Atlanta?

Mr. CLEMENTS. Yes, sir. We made other adjustments there for which it undertook to give the reasons in this report. We were dealing with these rates to these different places. We dealt with each one from the place of origin to the place of destination, and the distance was taken into account, and Rome being 75 miles shorter there was that difference, and the same thing ran through the others. There was not an absolute making of rates on distance, because the Commission took into consideration the water rates and the method which the railroad had agreed upon as the basis for counting miles on water as compared with miles on land in their adjustment of rates.

The CHAIRMAN. In the finding you did not give the reasons. Are they given there?

Mr. CLEMENTS. The Commission set out all the facts in its conclusion.

The CHAIRMAN. The reasons for it?

Mr. CLEMENTS. The reasons for what it did, whatever they are. They may not be considered good by these gentlemen.

The CHAIRMAN. Was any particular reason set up as to the difference between Rome and Atlanta?

Mr. CLEMENTS. None at all, except the difference in distance.

Senator DOLLIVER. Were either of those cities parties to the proceeding?

Mr. CLEMENTS. They were not.

Senator DOLLIVER. Or heard?

Mr. CLEMENTS. They had witnesses there from different places. I do not remember now, but they were not parties to the proceeding. The complaint was brought by the Cincinnati Board of Trade and brought against these roads leading from Cincinnati into that territory. The roads were heard, the complainants were heard, the whole facts were ascertained so far as could be ascertained, but these cities in the Southeast did not intervene; they did not come in and ask to be made parties. They were not shut out, but you can see if the Commission undertook when it received a complaint to invite all interests that might be affected, directly or indirectly, to become parties to the case, which they may do if they ask to do so, it would widen this matter out beyond limit.

The CHAIRMAN. Judge, here is a comparative statement showing the rate as changed from Chicago to Knoxville and Cincinnati to Knoxville. I wish you would glance over it and see if these changes as noted there are correct. Whether it would not have that effect according to the decision of the Commission in the Maximum Rate Case. That makes a very material change or difference?

Mr. CLEMENTS. Why, yes; it did make a material difference. Of course I can not verify all these figures in a moment.

The CHAIRMAN. I believe you wrote the decision, did you not?

Mr. CLEMENTS. Yes, sir.

The CHAIRMAN. Then you can readily say whether that is accurate, that comparison?

Mr. CLEMENTS. I have looked at some of these rates. As I remember it, they were the rates in that case, and I have no doubt this is a correct presentation of them. I have them here in the report of the Commission.

The CHAIRMAN. If that is correct, let it go in the record. It can come in here or elsewhere.

Mr. CLEMENTS. Before putting it in as a part of my testimony I should want to verify it, which is more than I can do here on my feet in a moment.

The CHAIRMAN. You can put it in subject to correction. If you find it is correct, you may say so; and if you find it is not, you may state in what particular.

Mr. CLEMENTS. If you will allow me to put in the whole report, it will tell the whole story.

The CHAIRMAN. According to the change?

Mr. CLEMENTS. Yes, sir. There is a table there showing just what the changes would be.

The CHAIRMAN. I would like to get that point settled and take only half a page.

The following is the table referred to:

[Rates in cents per 100 pounds.]

To—	From—	Classes.											
		1.		2.		3.		4.		5.		6.	
		Rate.	Ordered.	Rate.	Ordered	Rate	Ordered.	Rate	Ordered	Rate.	Ordered	Rate.	Ordered.
Knoxville	Chicago	116	93	99	79	88	88	64	44	55	37	42	28
	Cincinnati	76	53	65	45	57	37	47	27	40	22	30	20
Chattanooga	Chicago	116	100	99	82	88	65	64	47	55	39	42	34
	Cincinnati	76	60	65	54	57	40	47	30	40	24	30	23
Rome	Chicago	147	114	126	97	106	79	85	61	71	49	56	38
	Cincinnati	107	75	92	64	81	54	68	44	56	34	46	24
Atlanta	Chicago	147	126	126	107	106	85	85	62	71	50	56	39
	Cincinnati	107	86	92	73	81	60	68	45	56	35	46	27
Meridian	Chicago	134	114	109	93	91	82	76	60	63	47	55	38
	Cincinnati	122	114	102	93	89	80	75	62	62	49	54	38
Birmingham	Chicago	129	111	109	95	93	72	84	62	55	44	42	34
	Cincinnati	89	87	79	74	68	60	55	46	47	36	36	28
Anniston	Chicago	147	126	126	107	106	85	85	62	71	50	56	39
	Cincinnati	107	86	92	73	81	60	68	45	56	35	46	27
Selma	Chicago	138	126	126	112	106	89	80	66	67	53	53	38
	Cincinnati	108	108	102	92	88	78	71	60	59	48	47	36

Senator NEWLANDS. Is the decision a long one in that case?

Mr. CLEMENTS. No, sir; it is not very long—27 pages.

The CHAIRMAN. The Judge has said he would correct that. It has gone in subject to correction. The stenographer will insert it, and if the Judge finds it is not correct he will state it.

Mr. CLEMENTS. I will look over it, if you want me to. Now, that is used here as an argument to the effect that under any law which

authorizes the Commission to deal with these rates it might lead to adjustment of a great many rates. That is true. There is no dispute about that.

The CHAIRMAN. How many? Just state right there.

Mr. CLEMENTS. I don't know how many could have been affected there.

The CHAIRMAN. Hundreds?

Mr. CLEMENTS. Hundreds.

The CHAIRMAN. Thousands?

Mr. CLEMENTS. Hundreds; I do not know whether thousands or not.

The CHAIRMAN. A great many?

Mr. CLEMENTS. It would have operated to do that.

Senator DOLLIVER. Now, Judge, I found very great interest in your statement, and I think you agree with the witnesses on both sides that to confer general rate-fixing power on the Commission would not be desirable?

Mr. CLEMENTS. I do.

Senator DOLLIVER. And I have found a good deal of difficulty in this Maximum Rate Case on account of the size and the scope of it. I want to read now what the Supreme Court said of the order in that case, and ask your opinion about it as a practical question:

> There is nothing in the act requiring the Commission to proceed singly against each railroad company for each supposed or alleged violation of the act. In this very case the order of the Commission was directed against a score or more of companies and determined the maximum rates on half a dozen classes of freight from Cincinnati and Chicago, respectively, to several named southern points and territory contiguous thereto. So that if the power exists, as is claimed, there would be no escape from the conclusion that it would be in the discretion of the Commission of its own motion to suggest that the interstate rates on all the roads in the country were unjust and unreasonable and notify the several roads of such opinion, direct a hearing, and upon such hearing make one general order reaching every road and covering every rate.

Now, in your opinion, how far is that suggestion of the Supreme Court's decision applicable in a practical sense?

Mr. CLEMENTS. Well, I think that is rather overstating the business.

Senator DOLLIVER. How far?

Mr. CLEMENTS. I understand it is proposed in this legislation to deal with a complaint.

Senator DOLLIVER. How is that?

Mr. CLEMENTS. That the Commission shall pass upon a rate that is complained of, and besides that, undertaking to deal with every rate in the whole country and between every station in the country would require proceedings which would be too long for practical purposes. Now, let me answer that in another way.

On January 1, 1900, the roads doing business in the official classification territory, about 60 or 65 of them, had Mr. Gill as the chairman of what is called the official classification committee. About 13 or 14 members were on that committee, from each one of the principal roads in that territory, the New York Central, the Pennsylvania, and so on—not every little road has, but the principal roads each have one on that committee. Now, 65 roads in that territory filed with the Interstate Commerce Commission a statement that their rates and charges on freight would be governed by the official classification, and whenever any publication is made by the official classification

committee, it is a publication of their classification. It applies to them. They have adopted it before, and they have filed a notice to that effect, that that is their classification and they are to be governed by it. That applies, as I say, to some 65 roads in all that great territory east of Chicago. Along in the latter days of 1899 that committee got together and worked among themselves on classification rates and they issued a document called "Classification No. 20." It was their custom to issue one every year, the first of the year.

The CHAIRMAN. Right there. In the last report the Commission stated it would be noted that the number of cases by no means measures the rate, since a single case can be brought by a municipal organization or by shippers in an important locality, reaching numerous sections and distant points; and it shows how comprehensive these changes would be.

Senator KEAN. In other words, with one rate you could fix all rates?

Mr. CLEMENTS. Fix a good many. Now, let me proceed.

There were 65 roads in that great territory, all operating under the official classification promulgated by the committee of 15. And, by the way, the word "official" does not signify anything there. It is just the name they took to describe their committee in that territory. As I said, it is their practice, and has been for years, to file with the Commission public notice that the classification issued from time to time by this committee is the classification of each one of these roads, and it is in form and done formally. There are other roads in that territory without a notice of that sort filed beforehand who do adopt the same classification.

Now, in the latter days of 1899 this committee got together and formulated what they called "Classification No. 20," which was to take effect January 1, 1900, from that territory, making a new classification for the following year. They worked over it for days, and I do not know how long amongst themselves, and when they published it it contained in it between 600 and 700 changes in rates, which would not be changing the rate from 25 cents to 30 or 40 cents by name, but by taking one or a dozen articles out of classification No. 6 and putting it into class No. 5, and out of No. 5 into class No. 4, because the rates applied according to the number of classification. There was a flood of complaints by telegraph and by letter that came to the Commission as soon as this letter was given out. Inasmuch as it involved an increase in many rates, it was required under the law to be filed ten days before it was to take effect, so that by the 20th of January the public was advised of what was to be done.

The Commission was, I say, overwhelmed by complaints, by letter, by telegram, and by individuals who came to the Commission's office to talk about it and protest against it and ask that something be done to prevent its going into effect. It took sugar out of one class and put it into a higher one, thereby increasing the rate on sugar in all that territory and between all the stations in that territory. It took soap in carloads and less than carloads—and what moves more freely than soap and sugar—to every station in America. And when you put a little infinitesimal increase in freight on all that is carried in carloads or less than carloads, over a great extent of territory like that, it means a great amount of revenue. The same was true, I say,

with between 600 and 800 articles. These things were lifted up from one class to another by that committee and promulgated to take effect within ten days. The Commission had no power to suspend the operation of it. Its duty under the law was to file it. It was mandatory. They presented it and we filed it. That was all we could do. These people came down, they telegraphed us and wrote us, and we notified the railroads. Mr. Gill and some of his committee, to come down and give their reasons for it and have a public hearing.

There was of course no possible time in which the Commission could hear and write up the facts and take any step which would prevent the rates going into effect. But they wanted a hearing. We asked the roads to come down, through Mr. Gill, and Mr. Gilford, of the New York Central, a very intelligent and experienced traffic man, and many others came. And they said, "Yes, we have changed this classification. We have done it in order to raise more revenue. We have increased expenses to meet them. We have to pay more for labor, more for rails, more for bolts, more for bridges, and for material to build and run railroads; we need more money." They were asked if they were not getting more on account of the increase of volume of traffic, and they said, "Yes; but we can not rely on that alone. We think we are entitled under all the circumstances with this prosperity and flood of business to get more in order to meet our expenses." They were frank and candid, and there was no concealment, and then it was brought out they did it in conference, and when the committee of 15 formulated this new classification a copy of it was sent to each one of these 65 roads which operated and worked under it, and they did not promulgate it until they received the assent of each one of them substantially to let it be published and go into effect. It was alleged by these shippers that that was a conspiracy, that it was an agreement, that it was a combination, and that it was not done by each road independently. They could not put it in until each one agreed to it, and therefore the action of each one depended on the action of each other; that one could not maintain it and others disregard it. They admitted that, and the shippers asked to have the testimony sent to the Attorney-General, and on their request we sent it to him for an expression of opinion as to whether or not it violated the antitrust law; not that the Commission was undertaking to assume jurisdiction to enforce that, but it complied with the request of this great body of shippers who wanted us to present the matter and ask the opinion of the Attorney-General about it.

Senator KEAN. What did the Attorney-General decide?

Mr. CLEMENTS. Attorney-General Griggs decided that it did not show any violation of the antitrust law. Classification No. 20 went into effect the 1st day of January.

Senator NEWLANDS. In what year?

Mr. CLEMENTS. 1900; there was no way to stop it. It was done by all these roads together. It was done in one paper to which they had all agreed, and it went in effect in the twinkling of an eye, so far as the public was concerned. The public had not been consulted about it in any form or way, though a shipper here or there might have been.

Senator NEWLANDS. Do you know how much increase in revenue it made?

Mr. CLEMENTS. I do not know.

Senator KEAN. How much did the price of soap advance to the consumer?

Mr. CLEMENTS. I do not remember, but it went from the class 6 to class 5.

Senator KEAN. What did the consumer have to pay?

Mr. CLEMENTS. I do not know.

Senator KEAN. He did not pay any more, did he?

Mr. CLEMENTS. I have no doubt he did; I have no doubt of it; but I could not work it out for you. Is it possible that you can increase the price of these things and it never affects the man who consumes them? I think the consumer is a man who does pay for most of these things. If the consumer never pays this, I do not see any reason why the roads should not take about what they please. Nobody pays for it? I have never seen any way in which you could give one man money without taking it from another, unless you could make it—manufacture it.

Senator NEWLANDS. To what did the rate apply?

Mr. CLEMENTS. The rate applied to class 5 and class 6, but the increase was from the rate which applied to class 6 to the rate applying to class 5.

Senator NEWLANDS. The transfer is only made from class 6 to class 5? Is that the case?

Mr. CLEMENTS. When you take an article out of the sixth class and put it in the fifth class, you have raised the rate. It went over this whole thing, between 600 and 800 articles. Hay was one, soap was another, sugar was another. Now, if it can be assumed that it did not hurt the producer and did not hurt the consumer, then there is no harm done; but how you can work that out, I do not know. Now, there was a case where the railroad disturbed the whole situation. That fixed these rates on between 600 and 800 articles in the whole territory, and that did not only affect the rate in that territory, but it affected the rate from that territory into any other territory on all these articles.

Senator NEWLANDS. Do you know how many additional tariffs were filed as a result of those changes?

Mr. CLEMENTS. I could not tell you that. A great many were filed within three months. The committee took every paper up and revised it and reduced a whole lot of these increases. It is fair to say that. They found it created too much trouble or did not work well, or was going to cut off some of the business, or for some reason or other, and in three months after that they revised it themselves. They did not have the exclusive knowledge to enable them to do a perfect work, and so they went about it again, and every time they did it they disturbed the situation. They disturbed another rate; they disturbed the rates all over the country, if changing rates is a disturbance. But it did not stop the rounds of the earth; it did not stop commerce; it did not plunge everything into chaos and ruin. It disturbed a great many shippers, and there was a loud protest. You will see it in this document here. These protests are set out there. There were a few lawsuits that came from it. They complained of the

rate on soap. The hay people, an association of strong men, got together, and they complained of the rate on hay. We decided in that case it was an unjustifiable increase.

Senator DOLLIVER. If the Elkins law had been operative at that time, is it your opinion that the Commission could have made these railroads a party to the proceedings and secured an injunction against the change in the classification of those goods?

Mr. CLEMENTS. Well, I should doubt it. The Supreme Court has decided the Commission could not make a rate for the future. The Commission never attempted to make one for the future, but it did attempt to condemn the excessive part of a rate the whole of which was found to be unreasonable. The Supreme Court said that doing that operated to fix a rate for the future. The Commission did not undertake to promulgate a rate; it attempted to stop an excessive part of the rate which the roads had already made. It could not be done because it was a legislative rating and had not been conferred on a commission. Can a court do a legislative act? If a court undertakes to enjoin any more than 85 cents out of a hundred-cent rate, will not that body fix a rate for the future for the road to observe? Will not that be an act of the court? Can the court by injunction judicially make a rate for the future for a railroad when that is said to be a legislative act? That was what the Commission undertook to say; to simply enjoin the application of the excessive part of a rate, not to fix a rate for the future, for the roads might make anything else under that they pleased.

Senator NEWLANDS. That case, it seems to me, was an action of mandamus. Do you think it would have made any difference if it had been a suit for injunction?

Mr. CLEMENTS. In which case?

Senator NEWLANDS. The maximum-rate case to which you refer.

Mr. CLEMENTS. No; that was an injunction that we were asking for.

Senator NEWLANDS. As I understand it, and I was just looking over the decision, it was a proceeding for mandamus, the carriers to observe a rule that you had made.

Mr. CLEMENTS. I guess we undertook to use the language in the sixteenth section, "Injunction or mandatory order or other process," whatever it was.

Senator NEWLANDS. Is there not this distinction: You assumed you had the right to fix the maximum rate?

Mr. CLEMENTS. We assumed we had the right to say how much of an unreasonable rate was unreasonable.

Senator NEWLANDS. And ordered a discontinuance?

Mr. CLEMENTS. A discontinuance of the unreasonable part of it.

Senator NEWLANDS. You assumed that it was their duty to obey that order, and hence you brought a proceeding in mandamus compelling them to discharge their duty under the law. Is there not some distinction between that and bringing up a proceeding to obtain an injunction preventing them from collecting a rate which you have condemned as extortionate?

Mr. CLEMENTS. I think, Senator, if you will look at that case you will see what we asked was an injunction against the enforcement of any other rate in excess of that which we had said was the limit of

the reasonable rate. But, whatever the process may be, the court has said that was in effect fixing the maximum rate for the future.

Senator NEWLANDS. That is true; but it seems to me in mandamus you had a right to rely upon your power to condemn the excess over a reasonable rate as extortion. Now, then, mandamuses only lie to compel them to decide their duty under the law, and, as I understand it, the writ of injunction would apply entirely regardless of the question as to whether you had a power to fix rates or not.

Mr. CLEMENTS. I think you will find that what we were trying to do there was to enjoin them. That was what we were asking for. That was drawn by the lawyers. I have no doubt you will find what was asked for there was an injunction.

Senator DOLLIVER. I had an idea that this change in the classification created a change in the rate. If the Elkins law had been at that time enforced, could not the Commission have gone into the circuit court and asserted that that change in the classification created in these cases an unreasonable rate, and asked the court to enjoin?

Mr. CLEMENTS. I do not know any provision in the Elkins Act which authorizes that, Senator.

Senator DOLLIVER. An unreasonable rate is a violation of the law, and section 3 of the Elkins law seems to provide that that process may be made applicable to any violation of the interstate-commerce law.

Mr. CLEMENTS. I think if you will examine that carefully you will see it refers to discriminations.

Senator DOLLIVER. I think it does, but also to any other unlawful act.

Mr. CLEMENTS. Any discrimination forbidden by law. I think you will find it is limited by that. Suppose, now, that the Commission had filed a bill and sent this testimony to the Attorney-General. Suppose they had filed a bill at that time.

Senator KEAN. Is not any unjust change in classification and discrimination forbidden by law?

Mr. CLEMENTS. The law requires the carriers to file their classifications—make them and file them with their rates—and the Commission is not permitted to participate in making them for them.

Senator KEAN. It is an unjust discrimination and can be enjoined?

Mr. CLEMENTS. Well, a great many of these rates doubtless would not have been challenged as an unjust discrimination. They were challenged as being excessive. We did find in the Hay Case there was an element of discrimination, but that it was unreasonable also, and there were doubtless some discriminations.

But, now, think of the situation. There is a paper filed on the 20th, terms of which are to go into effect on the 1st of the following month.

Senator NEWLANDS. Mr. Clements, before we get to that, I will read a quotation from this Maximum Rate Case.

Mr. CLEMENTS. Let me ask you this question: With what intelligent degree of information could the Commission go into a court in those two days and classify all of those changes, six or eight hundred, and even lay a prima facie foundation for an intelligent allegation in regard to each one of them? Some of them may have been reasonable and some unreasonable, some discriminatory and some not. It is a wholly unworkable proposition to act in time to prevent the

application of a change like that. Then, suppose we had gone on taking it up rate by rate, as has been suggested here, on one line after another. None of us here would have lived long enough to be able to get through with this line of hundreds of articles—six or seven hundred at one time. They were increased generally for one reason, and that was to get more revenue. They frankly said they picked out the articles that would bear it best. They were after more money, and they looked around and saw what would stand it best. There was no concealment of the purpose or method.

Senator CULLOM. The railroads fix their own classification, and there is no law to prohibit them?

Mr. CLEMENTS. No, sir.

Senator CULLOM. And the question is whether, if they put in force the actual freight under them, they are extortionate or not, and unreasonable?

Mr. CLEMENTS. Yes, sir.

Senator NEWLANDS. As to the remedy, Judge Clements, I find this in the opinion of the court, page 5:

> We perceive in this case that the Interstate Commerce Commission assumed the right to prescribe rates which would control in the future, and their application to the court was for a mandamus to compel the companies to comply with their decision; that is to say, by their determination as to the maximum rates to be determined in the future.

I understand that some of the representatives of the railroads who have appeared before us contend that injunction would be available in order to prevent the imposition of a rate a part of which was excessive, and that the injunction would lie against the excess. As I understand it, this case was brought by the Attorney-General, was it not?

Mr. CLEMENTS. No; it was brought by us.

Senator NEWLANDS. You made up the case and sent it to the Attorney-General?

Mr. CLEMENTS. Of course, it was proceeded with under the direction of the Attorney-General, as are all of these cases.

Senator NEWLANDS. The pleadings were prepared there?

Mr. CLEMENTS. No; I guess that was prepared in the Interstate Commerce Commission's office, and by the United States attorney.

Senator NEWLANDS. Now, I am not sure whether there is anything in the point or not, but I would like your opinion as to that. As I understand, the contention is that injunction would lie regardless of the question as to whether the Interstate Commerce Commission has got any power at all as to rates, or regardless of the question as to whether it has the right to make any order compelling the railroad to desist.

Senator CLAPP. If you will pardon me, Senator, I think you mistake their position. Their position is that the law might be framed under which that could be done. Under existing law the injunction could only lie where the complaint is based upon discrimination. I do not think any of their lawyers would claim under the existing law that a judgment would lie against existing rate on the ground that the rate per se was unreasonable.

Mr. CLEMENTS. If it did, under that decision, it seems to me that the court could not fix a rate for the future.

Senator NEWLANDS. I understood it was contended an injunction would lie to restrain an extortionate rate.

Mr. CLEMENTS. I do not know any authority under which it would lie. Certainly the methods by which these cases are laid out in the law, it says how the Commission shall proceed, how it shall report, how it shall investigate, what it shall do, how it shall file its proceedings to enforce its orders. It is statutory.

Senator NEWLANDS. Now, take the case of a shipper who complains of an extortionate rate. He can, after paying that rate, bring an action for damages for the extortion, and he can recover. Now, suppose he brings eight or ten such suits, one after the other, and recovers, are they to continue to collect this extortionate rate? Would he not have a right to go into equity upon the ground of preventing a multiplicity of suits, and enjoin the railroad in the collection of that extortionate rate? Would not that be outside of the interstate-commerce act?

Mr. CLEMENTS. I could not say whether he could or not. I would say that that was a wholly inadequate remedy for the wrongs that are suffered by reason of unjust rates. Mr. Bond referred to that process in his discussion of this matter. He said you could put it before a jury. A jury here to-day would find one rate reasonable, and one over yonder would find another, and you could have no uniformity of rates. The law requires the carriers to enforce and collect their published rate so long as they are published, but it is a crime to collect any other rate or to pay back any part of it. The law has fixed the published rate which they file as the standard, so long as it is not condemned, and it is enjoined upon them to adhere to this rate, and they are punishable for deviating from it either more or less. Now, there must be some way in which to correct that.

But I do not desire to go away from the question that Senator Dolliver suggested. I realize the objection to it and the difficulties about it. On the other hand, it is an old principle of law that will be found in the books in every State perhaps, that wherever there is wrong there must be a remedy, and the theory is that the remedy must be coextensive with the wrong. For every injury there must be a redress, or the theory of it, at least, and the one must be as broad as the other. Now, if the carriers can in one paper, 60 or 70 of them, promulgate rates—fix rates all over this country in ten days—if there be any supervision of it, there must be a supervision that is as broad as any injury complained of.

Senator KEAN. How can the Interstate Commerce Commission do that? If they can not in ten days revise the rate on six or eight hundred articles, how can they take the whole country under their eye?

Mr. CLEMENTS. How can the railroad take the whole country and in one paper upset the rates all over the country? Is it to be assumed that what they do creates no wrong, and that because it is big we must run away from it? I understand that the American people, by their history, show that they are capable of dealing with all questions and conditions as they arise.

Senator DOLLIVER. If it were possible to frame the law so that the Commission independent of the Department of Justice in such a case as you have described could immediately apply to a court of equity

for a temporary injunction on the ground that the new classification created an unreasonable schedule of rates, would not that be a swift and effective remedy?

Mr. CLEMENTS. I think it would. I think it would be a very wholesome thing.

Senator DOLLIVER. Very much better than the long investigation of a year or two by the Commission while the rate is still in force?

Mr. CLEMENTS. I think it would be a very wholesome thing that in a case like that the Commission, or somebody else representing the public, could go to a court and have that paper suspended and have it held up until there can be some investigation of it, and before it goes into effect.

Senator DOLLIVER. Especially if the complaint in equity might prove the fact that there was an unlawful combination of carriers to produce this result?

Mr. CLEMENTS. It might be that there was good ground, and the Commission has not disputed that there was good ground, for an increase of some rate, that more money was needed, and that it was not assumed—and I am not pretending now to assume—that all of this business was wrong. But this was done in one paper, and at one time, and nobody could help it. In two or three months they were revising it themselves, and cut out some of these increases. There has been a good deal of this increase effected by putting the goods at a class rate that for some time back had been going at a commodity rate, that rate being much lower than the class rate. But they revised their work, still leaving in a great many of these increases.

I want to call your attention to another fact. It has been stated that since this increase is made in different sections of the country, this among others, that there has been a process of reduction. Now, we must not be misled by that too much, because many of these reductions that are spoken of are high yet, occurring since that time, in southern and in western territory, and in eastern territory--reductions from the increases that were then made, not reductions back to the old rates. So that it is not fair to give credit for everything that is called a reduction since that time, which in the end was nothing but a modification of the increase that had been made, for many of these have not even been reduced in that way.

Now, here is another illustration. On March 15, 1903, there was an advance in class and commodity rates from all the territories to Texas points, an advance from the Missouri River and all territory east thereof, being an average of 7.6 per cent. Now, there was a blanket advance, an advance on all the roads on all the class articles and substantially on all the commodities from every point in the Missouri River territory and east thereof into Texas. That was a very sweeping advance. If the Interstate Commerce Commission had ever made an order that amounted to one-fourth of them, it would have been berated here as a rate-making and promulgating act, and it would be said it had undertaken to lay hold of the business of the country and held up all these industries and laid its heavy hand upon these matters. But where does the man who is said to have the right to a reasonable rate there as a shipper or consumer have a hearing? Now, if he has any right involved in it, there must be some place in the Government, which proposes to give equal justice to all people, where

he can be heard and say something about it. Now, you say he can be heard. He can be heard before the Interstate Commerce Commission now. He can file a complaint, and grumble about it, and so he is heard. When I refer to a hearing, I mean by that a hearing where a wrong can be stated where there is one, and a right can be put in its place. That is the kind of a hearing I am talking about.

Senator KEAN. He has that in the court, has he not?

Mr. CLEMENTS. I think not. Even upon the theory that he could enjoin the enforcement of a rate because it was unreasonably high, the court would not undertake to say how much the road should charge next week. That would be making a rate by judicial action—a rate for the future. There are many other increases here which I have written in this memorandum. I have not undertaken to put in the little ones, but a few that occurred at the time. It is the large and sweeping ones. Now, I repeat, if there is anything in the idea that the people are to have any place where they can be heard with effect, where there could be a remedy administered for an ascertained wrong, the remedy must be as broad as the wrong. Otherwise it is a failure. There have been some references to the Lumber Case, recently decided, and now pending in the court.

Senator KEAN. It was not decided.

Mr. CLEMENTS. By the Commission, I mean.

Senator KEAN. It was decided by the Commission?

Mr. CLEMENTS. The Commission held that the increase was unreasonable and unlawful.

Senator KEAN. The Yellow-Pine Lumber Company?

Mr. CLEMENTS. Yes.

Senator KEAN. I thought the Commission stood 2 to 2.

Mr. CLEMENTS. No; 3 to 2.

Senator KEAN. I thought it was 2 to 2.

Mr. CLEMENTS. No, sir.

Senator KEAN. I did not know that the other man was here.

Mr. CLEMENTS. Yes, sir. It is said by Mr. Hines in respect to that matter that it was first raised to 14 cents and then to 16 cents. "Then that brought about a corresponding raise east of the Mississippi River on some traffic, because it had been brought down to that unreasonably low figure on account of the very low rate west of the Missouri River. Lumber people were making enormous profits, and of course the cost of production to the railroad had very much increased, and they took advantage of the opportunity which the withdrawal of the excessive competition west of the river gave them to raise their rate. In other words, it was brought down simply because the rate from Arkansas to Cairo came down to 13 cents, and, when conditions were such over there that the rate was raised, the rate east of the river was raised accordingly. I think lumber, as I now recall, was the only commodity that constituted any very important part of the change where the rate was raised. As I say, in this reduction a very low figure in the first place, and if increased afterwards was due to that fact." Now, it would seem from that that you are to understand that there has been a low rate by reason of competition. The carriers from Arkansas to Cairo made a 13-cent rate, and roads from Georgia and Mississippi had to meet it and they put in a 13-cent rate. And when the

Arkansas railroad withdrew that excessive competition that had made the 13-cent rate, that gave the opportunity to the roads east of the river to come in and take what they thought they ought to have out of it.

Now, I want to give you the manner in which that matter was proceeded with.

Senator KEAN. Is that the Yellow Pine Case?

Mr. CLEMENTS. It is the Georgia Sawmill Company, as it is called, H. H. Tift & Co. et al. against the Southern Railway Company et al. These cases are very much alike. One is known as the Georgia Case and the other is the Mississippi Case.

Senator KEAN. We have in the record the whole of that Mississippi Case, put in by Mr. Robinson, of Louisiana.

Mr. CLEMENTS. Not the testimony in the case, I presume. I only want to call the attention to the manner in which this excessive competition west of the river was removed, and it will not take me long to do that.

It would appear from this statement of Mr. Hines that it was a very innocent and natural thing in the course of business that there had been a very low rate, and that had caused a low rate from points east of the river, and that the Arkansas people took out their excessive competitive rates and that gave the opportunity to the roads in there to go back to their rates, such as they wanted.

Mr. Green, a witness in the case in behalf of the Southern Railway, testified as follows:

Mr. BOATRIGHT. With reference to this general increase in the lumber rate through the yellow-pine producing section, was there any effort made on the part of the Southern Railway or other Georgia line, in your knowledge, to have the lines west of the river increase their rates, or did they do that voluntarily and without suggestion? I am referring to the increase in 1903.

Mr. GREEN. Do you mean a conference between the southern lines and the lines west of the Mississippi River?

Mr. BOATRIGHT. Conference or understanding or suggestion; I do not know which it might be called. Was there any effort on the part of the Georgia line to secure this advance from Arkansas territory, or did they make it of their own volition and without consultation?

Mr. GREEN. I will relate the whole story, so far as I know it. My information is that this question of advance rates on lumber was first discussed at the meeting in St. Augustine on January 28.

Commissioner PROUTY. What year?

Mr. GREEN. 1903.

Commissioner PROUTY. You are referring now to this last advance?

Mr. GREEN. Yes, sir. That is what I understand he is asking about.

Mr. BOATRIGHT. Yes, sir; the last increase.

Mr. GREEN. The conference was between the lumber-carrying roads, and I think possibly representatives of some of the Mississippi lines were present; but there were none from west of the river, so far as I know. I was not present at the conference. There was a subsequent meeting at New Orleans and, I think, a third meeting at St. Louis, at which I believe the Arkansas lines were represented. Whether any line east of the Mississippi River suggested an advance from Arkansas I do not know.

Mr. BOATRIGHT. Were the rates from Arkansas territory as well as Mississippi and Alabama all put into effect or intended to be put into effect at the same time—April 15?

Mr. GREEN. Yes, sir.

Mr. BOATRIGHT. Do you think that would have been possible, Mr. Green, without some common understanding?

Mr. GREEN. I do not think there is any doubt about the date the rates were

to become effective. We would hardly want to put our rates up on April 15 from Georgia and have the Arkansas rates go in on the 30th.

The CHAIRMAN. I understand Mr. Boatright's question to refer to the lines east of the river, including your road, as to whether they made an effort to induce the lines west of the river to advance their rates?

Mr. GREEN. Speaking for the Southern Railway, I will say no.

Mr. BOATRIGHT. In speaking for the others, what would you say?

Mr. GREEN. I do not know what.

Mr. Compton, of the Louisville and Nashville Railroad, a traffic official in some capacity, testified as follows:

Commissioner CLEMENTS. You are in charge of the traffic of your road and I suppose received some instruction or information from those who did attend that meeting, or some information as to what was to be done?

Mr. COMPTON. After the St. Augustine conference I had a conference with Mr. Goodwin—he is our general freight agent—and I told him I thought it desirable on our part to get an advance in our rates on yellow pine lumber. Our people seemed to think it was reasonable that we should have an advance. So far as the advance in the rates is concerned, I say to you that we had no agreement with anybody to advance these rates, and what the Louisville and Nashville did it did of its own accord, and I say further that I personally suspended the advance of these rates until March 1, because we all thought we ought to get the lumber out. I acted independently. I have acted in no other way. I will say that I am under no restraint in handling the traffic of the Louisville and Nashville road.

Commissioner CLEMENTS. Had you made up your mind to advance the rates on your road without regard to what the Arkansas roads did, whether they advanced theirs or not?

Mr. COMPTON. I do not see how we could very well carry higher rates.

Commissioner CLEMENTS. I do not either; but one step, the inference seems to be from all you say, in order to effect your own increase, was to get the Arkansas roads to advance theirs. Is that so?

Mr. COMPTON. They were conferred with. There was free consultation.

Commissioner CLEMENTS. For what purpose?

Mr. COMPTON. Everybody expressed their views.

Commissioner CLEMENTS. Would you put up your rates if they had not declared that they were going to put up theirs at the same time?

Mr. COMPTON. I do not see how we could carry a higher rate. I have the right to.

Commissioner CLEMENTS. You would not have done it?

Mr. COMPTON. I would not carry rates on the Louisville and Nashville higher than from Arkansas.

Commissioner CLEMENTS. You would not put them up unless they declared that they were going to put up theirs?

Mr. COMPTON. I would not.

Now, I have read that simply to illustrate the manner in which these increases were brought about. It was stated here that when the excessive competition of the roads west of the Mississippi River was withdrawn, which was expressed in the increase of the rates, that gave the roads east of the river a chance to put up theirs, whereas the testimony shows that three conferences were held, and swung around, one at St. Augustine, one at New Orleans, and one at St. Louis, and it took three of them to bring them all together, which resulted in this simultaneous consultation which resulted in each one getting up and going off and saying what he would do. Each one is independent.

No binding agreement, of course, was made, because it would be a crime to make one. And each one is independent, because he can not be compelled to adhere to an illegal agreement. But each one wanted to do the thing, each one declared that it was a good thing to do, and each one declared it to each of the others, and then they went and

did it by a common agency, which published a common rate all on a common date. That is the way the thing is done now, since these agreements and combinations have been revised, since the decisions of the Supreme Court in the Joint Traffic Case and in the Missouri Case and under the antitrust law. And I should think that, as these things are done in this way, it affords some reason why there should be some public supervision somewhere, so that if these people, looking to their own interests with the view of getting the greatest net revenue for all parties concerned, should happen to overstep the margin of justice and right, there should be some way to correct it, whether they do it by one rate or by wholesale, as between Texas rates and in the classification territory.

Senator KEAN. You said that you had a memorandum showing a large increase of the rates. Have you a memorandum also of the decreases in the rates for the last six months?

Mr. CLEMENTS. No, sir; I have not all the figures. I only have the marked ones.

Senator KEAN. Just a few increases, and none of the decreases?

Mr. CLEMENTS. No, sir; I did not bring them. I told you that there were a great many.

Senator KEAN. A great many decreases?

Mr. CLEMENTS. Yes; decreases, so called; and some of them really were decreases; but many of them were merely modifications of increases, and they have been counted as decreases. I did not bring this for the purpose of showing, in this paper, the whole matter, but I brought it here for the purpose of showing how much can be done in one paper.

Senator KEAN. Were not the increases, then, merely modifications of former decreases?

Mr. CLEMENTS. Oh, well, this very case, this lumber case, shows that that rate of 13 cents had been in about nine or ten years.

Senator CULLOM. Yes; of course every change is either an increase of a previous decrease or a decrease of a previous increase.

Mr. CLEMENTS. Undoubtedly.

Senator CULLOM. It was either a reduction or an increase.

Mr. CLEMENTS. Yes, sir; undoubtedly in former years most rates were higher than they are now. I am not disputing that. But many of these rates had not for a long time been any higher than they were. Mr. Fish thinks that I am mistaken about those lumber rates having been in for that length of time. It is my recollection. Here is what Mr. Powell said:

> Mr. POWELL. Effective January 2, 1888, the rate on lumber from Arkansas mills between Camden, Ark., and Texarkana, Ark., to Cairo was reduced to 13 cents per hundred pounds. Without knowing exactly the location of the various mills in that group, I should say the average distance was about 365 miles.
>
> Mr. BAXTER. Well, as to the rate of 13 cents per hundred pounds which you say was in effect from Arkansas mills to Cairo on January 2, 1888, how long did that remain in effect?
>
> Mr. POWELL. It remained in effect until 1899.

That was from 1888 to 1899, according to his testimony in respect to those rates. Oh, Mr. Fish says that he had reference to the rates in Mississippi. I was talking about the rates in Arkansas, where this fierce competition was removed and the rates from Mississippi and Georgia went up. And according to Mr. Compton's testimony, which must be perfectly conclusive, in reason as well as because he testifies

to it, one of these roads would not have undertaken to increase this rate and give up its business to all the others unless it had an assurance from the others that they would do the same thing at the same time.

Senator NEWLANDS. It is not reasonable to expect that, is it?

Mr. CLEMENTS. No, sir.

They did not make any agreement to do it, however, as they say.

Senator CULLOM. Has the Commission made any ruling on whether that was reasonable or not?

Mr. CLEMENTS. Yes, sir; the Commission held that that was an unreasonable increase and an unlawful increase.

Senator NEWLANDS. What action did the railroads take?

Mr. CLEMENTS. They disregarded it.

Senator NEWLANDS. Is that now pending in the court?

Mr. CLEMENTS. Yes, sir. The shippers had in this matter undertaken to do just what is suggested here before the Commission acted and before the filing of the complaints before Judge Spier and Judge Niles. There was a complaint filed before Judge Spier in Georgia and Judge Niles in Mississippi. Before they presented any complaint to the Commission they had been up before the Commission and we had notified the officials of the roads of it, to talk it over and see if something could not be done after notice was given and before it went into effect. They came freely, and the mill men came, and they had it out before the Commission and tried to settle it by an adjustment. They failed, and the roads insisted upon putting it in.

They had another conference in Atlanta, and that failed; so that it could not be adjusted between them, and they presented their complaints before Judge Spier in Georgia and Judge Niles in Mississippi. Judge Spier held that he had jurisdiction, but it was a question of such a nature that he wanted the matter passed on by the Interstate Commerce Commission before he would undertake to deal with it. He said that it was a question peculiarly left to the Commission to investigate in the first instance and he wanted the benefit of that investigation, and he would not dismiss the bill. He overruled a contention that he had no jurisdiction, but he said that he would hold it until they could present their complaint to the Commission and have it act, and that was gone through with, and, as I understand it, the understanding between the roads and the complainants is that that matter will be heard by him about the 1st of June. Judge Niles, as I remember it, decided that he had no jurisdiction, and dismissed the bill. Now, there was a test of this very question. He held that he had no jurisdiction to enjoin the roads in the matter at all. I do not know what the Supreme Court will hold, of course, but there were two decisions. Judge Spier entertained it, but waited for the report of the Commission; and Judge Niles dismissed it.

Senator KEAN. And it took the Commission from December, 1903, to 1904 to decide it, and they did not file their opinion until February, 1905.

Mr. CLEMENTS. What time in 1903, Senator, was it filed with the Commission?

Senator KEAN. According to Mr. Gardner's testimony before the Commission, the case was filed with the Commission in either July or August, 1903. That was Mr. Gardner's testimony.

Mr. CLEMENTS. Yes, sir; that is probably true. These rates were put in in June.

Senator KEAN. And it was decided about the 1st of March, 1905?

Mr. CLEMENTS. Yes, sir. I suppose that is for the purpose of showing that the Commission has been derelict?

Senator KEAN. Mr. Gardner was discussing giving additional powers to the Commission.

Mr. CLEMENTS. I supposed the Senator from New Jersey called attention to it for some reason.

Senator KEAN. I did.

Mr. CLEMENTS. That shows a little delay. But here is the printed testimony in one of those cases [indicating record].

Senator KEAN. I do not see very well how Mr. Gardner could have done anything else but give such testimony, after having 3 to 2 of the Commission decide in his favor.

Mr. CLEMENTS. I should hardly impute to Mr. Gardner a motive such as that, that he had come here simply because he had won a case, if you could call it winning a case. Here is one of these cases containing some 1,700 pages of testimony filed, with the exhibits. There is another here quite as elaborate. It is not strange that it should have taken a little over a year, with all the other engagements of the Commission, to make a decision in that case. There have been about 2,300 informal complaints disposed of in the last five years by the Commission. That is somewhere between one and a half and two a day. All of those required a lot of letters back and forth, and there is a large volume of that business going on all the time. The Commission can not close its doors and go and sit, like a court, you know.

Senator NEWLANDS. I do not understand that there has been any complaint that the Commission has not been active in its work. The question is raised that the Commission is overloaded with work now, and to increase its jurisdiction would simply delay the administration of these matters.

Mr. CLEMENTS. I understood that the railroads were complaining here because we did not enforce the law against them rapidly enough. That is the way that I have understood it.

Senator NEWLANDS. That is true. Mr. Gardner was not complaining, as I understand it, that you were not active enough.

Mr. CLEMENTS. I do not think that any undue amount of time was spent on that case.

Senator NEWLANDS. And on that subject, as to whether or not this duty that is assigned to the Commission will so increase their work as to make it practically impossible for them to hear and determine, what is your opinion?

Mr. CLEMENTS. I should think not. If it does, we could find some remedy for that, I suppose. It is not going to upset the business of the world. It did not before. And people, I guess, in the main, are fairly reasonable. People do not want to confiscate railroads. I am sure that is true. You may go out in the country and go everywhere and you will find that nobody wants to confiscate the railroads. No man wants to do it, and the courts are here forever to stop it if they did. But the shipper, if he has any rights whatever involving the amount of the rate, I repeat, ought to have a place somewhere where he can be heard with effect and have a correction of it,

Now, we have here another investigation of the increase of the rates on grain and iron articles, and so forth, and Mr. Powell, of the Southern Railroad, a very reputable gentleman, who knows a great deal about railroads and their rates and their business, was asked in that case certain questions, and testified as follows:

You draw a distinction between an announcement and an agreement as to what was done at the New York meeting?

He had been attending a meeting of that sort regarding these rates and made some statement of that sort.

You do not mean to convey the idea that there was an announcement by each road, that there was an absolute intention to raise these rates regardless of what the others did?

Mr. POWELL. As some of the witnesses have explained, all rates are made after discussion. No line can, in point of fact, without a great deal of danger to its revenue, without notice and discussion with another line reduce its rates. The effect of such action in the past has been the demoralization of the rates. Therefore at all meetings the advancement or reduction or the reasons for and against it are given, as a general thing. Sometimes it requires only a small amount of discussion, and sometimes it takes considerable, different lines having different views on the subject. But having concluded the discussion, it is the practice, in all deliberations in which the Southern participates, to make separate announcements.

Q. They did not mean to say that one would do it whether the other did or not?—A. You mean advance?

Q. Yes.

Mr. POWELL. It would be impossible to advance rates between two commercial centers on one road unless it was done by competing lines, unless the first-named line would go out of business.

Then he was asked:

So it is fair to say that the action of each company was dependent on what the others did, is it not?

Mr. POWELL. I think that is a fair statement.

Now, that is the way these rates are increased. They get together and talk it over and say that it ought to be done, and each one goes off and they all do it.

Senator DOLLIVER. Are the reductions also made by the same kind of agreement?

Mr. CLEMENTS. Yes, sir. They are frequently made the same way; not always.

Senator DOLLIVER. Does the Commission regard that as a violation of law?

Mr. CLEMENTS. It can hardly find that it is a violation of the law that it is charged with enforcing—the interstate-commerce law.

Senator DOLLIVER. What do you think of the wisdom of giving legality to such agreements, subject to the revisory power of the Interstate Commerce Commission?

Mr. CLEMENTS. The power to make these agreements, to make rates, and maintain them?

Senator DOLLIVER. Yes, sir.

Mr. CLEMENTS. I have always been afraid of that, myself. I confess there are many good people who think it would be a wise thing to do, but it certainly ought not to be done without some adequate measure of correcting a wrong when it is done.

Senator DOLLIVER. Supposing the law is modified so as to give the proposed increase in power to the Commission in finally adjudicating these matters. What would you say as to the legality of giving the

right to make agreements—I do not mean pooling contracts, but agreements as to rate schedules—where railroads are involved in the same traffic?

Mr. CLEMENTS. I would not feel justified in saying affirmatively that that is a wise thing to do. I will not say that I am thoroughly satisfied, beyond doubt, that it would be unwise. It is a very large question, and it is particularly large when you come to look at the manner in which these combinations are going on all the time. I should think the railroad people would regard the Commission as wholly incompetent to deal with such a question as that; that they would hardly be able to get along with it.

Senator DOLLIVER. On the other hand, Judge Logan prepared a bill which was pending before the committee for some time——

Mr. CLEMENTS. Yes, sir.

Senator DOLLIVER (continuing). Which involved that exact scheme. or very nearly the same thing.

Mr. CLEMENTS. Yes; I know. Pooling, or something like it, has been advocated for a long time. Mr. Tuttle told you the other day that pooling was no longer thought of, at least by himself.

Senator DOLLIVER. Professor Ritchey told us it was the one thing to do.

Mr. CLEMENTS. Yes.

Senator DOLLIVER. Public opinion seems to be opposed to it.

Mr. CLEMENTS. The public is afraid that these people will do like other people, and that that would enable them to get more than if they were left in competition with each other. Now, I am not here to arraign the railroads. These gentlemen are elegant gentlemen in many ways, but they are not different in human nature from other people, and when, under the law, you can lawfully take a profit, most people are disposed to take it by lawful methods. It may be an excessive one, but whether you can get it under a protective tariff or under a railroad adjustment, or, frequently, under a rebate, people are tempted to take it. regardless of their neighbors. They do not regard themselves as the keepers of their brothers and neighbors in that respect.

In regard to this matter of capitalization something has been said, in this argument on behalf of the widows and orphans. I see a good deal of data has been put in here from time to time showing the distribution of railway bonds and railway stocks, and some gentlemen have been in here and discussed the interests of people who have their little holdings invested in these things as a kind of a savings bank, and say that that is an interest which must be looked after, which simply means that they must look after that property and provide against its confiscation by destroying the profits and taking away the interest and dividends, which is a perfectly rational and reasonable thing to do. Undoubtedly a railroad ought to be able to earn enough to take care of its fixed charges and to earn a reasonable profit, if it can do so, whether these stocks and bonds are held in the hands of one person in a block of 10,000 bonds or whether they are scattered among many hands—whether they are held by widows and orphans or by millionaires. I see no difference in the principle. It is a monstrous proposition that if property is held by one or two millionaires you can confiscate it, but if held by widows

and orphans you can not. The law makes no such distinction as that, and the presentation in itself involves the theory that there is one rule for one class of people and another for another.

There is also this argument, which I have observed: That anything is to be inferred from the fact that a lot of railway conductors and switchmen and railway employees of various sorts have sent in petitions protesting against this power. I would hardly assume that they were men of such exact knowledge of rate-making conditions that they would know enough about this branch of the railway business to afford you information. They simply protest that if you rob the railroad, the railroad can not pay them; and if you let the railroad make an excessive profit, then it can pay them excessive wages. I hardly think the law takes notice of anything of that kind. There is no principle upon which it is right for a railroad, a railroad management, or the railroad employees to combine against the consumers and the producers of this country. What is right is fair and just. Beyond that it makes no difference whether the exaction, if it is unjust, is taken by one or by the other or by both, and distributed. There is no soundness in that principle.

But I have a little matter here that I want to call to your attention, which was disclosed in the proceedings two or three years ago. The railway commission of Kentucky presented a complaint before the Commission which called for the investigation of the acquisition of the Louisville and Nashville Railroad by Mr. Gates. That came out, at least, in the investigation. It appears that Mr. Gates, a very active man, had gotten hold of a majority of the stock of the Louisville and Nashville Railroad Company, which had previously been held and controlled by the Belmonts, in the interest of others whom they represented, and it disturbed some gentlemen in New York very much to think that Mr. Gates should be turned loose as a railroad man in the South, running the Louisville and Nashville road. The testimony shows that Mr. Gates had begun to buy this stock of the Louisville and Nashville Railroad at about 110, and he paid as high as 130. It was said that he paid on an average about 125 for it. It was running along at about 110 before he commenced.

When it was ascertained that he had a majority of the stock, Mr. Morgan was able to get Mr. Schwab to go, at 1 or 2 o'clock at night, to his hotel and wake him up to know upon what terms he could get an option upon that, or buy it, and they found Mr. Gates and got him to give an option by which he agreed to take 150 for all majority of the stock. They took the option and handled it, and Mr. Morgan called up the president of the Atlantic Coast Line and suggested the situation to him, and the outcome was that the Atlantic Coast Line agreed to take it at 150, and to do so issued $35,000,000 in new bonds, $8,500,000 in new stock, to the former stockholders—to the then stockholders—and $5,000,000 of stock further. That resulted in an increase of the bonds and stocks of the Atlantic Coast Line; a net increase, of about $50,000,000, in order to enable the Atlantic Coast Line to take the control of the Louisville and Nashville Railroad out of the hands of Mr. Gates. Mr. J. Pierpont Morgan expressed it in this way in his testimony:

> I do not wish to impugn any man's ability, but I did not consider that Mr. Gates was a proper person to manage the Louisville and Nashville Railroad.

Mr. Gates was perhaps an active man, and he might indulge in

what would be called among railroad brethren "unreasonable and rough competition." I suppose that is what it meant. He was not wanted in that family of railroad men. And therefore the net outcome was that the Atlantic Coast Line was saddled with about $50,000,000 more of capitalization in order to get Mr. Gates out of the way. The property did not have another nail driven in it, or another cross-tie, or any more rolling stock, or any stock of any sort in addition; but when you talk about the railroad rates of the Atlantic Coast Line and the increase of 2 cents on lumber which the Atlantic Coast Line made along with others, the Commission, or Congress, or the country want to consider that $50,000,000 of capitalization, as well as that part of the capitalization of these railroads in the hands of the widows and the orphans who have put in their little savings into these securities. And when you consider these $50,000,000 worth of bonds, of capitalization, you should consider that the bonds become a fixed charge. Interest on them must be paid.

That is just one little case. That is an illustration of what is going on and has been going on.

Senator DOLLIVER. Would you suggest an investigation of the issue of new securities of these railroads?

Mr. CLEMENTS. There may be a remedy of that sort; but I am making an answer now to this cry about the confiscation of bonds and stock, and the confiscation of property, and so forth. I think considerations of that sort, as well as of these combinations in restraint of trade by which rates are advanced upon agreement, are legitimate and pertinent considerations when you come to consider the reasonableness of a rate; because the law has left competition to fix the standard of reasonableness in respect of rates.

Senator CULLOM. If it will not disturb you, will you be kind enough to tell me when Mr. Gates sold to Mr. Morgan, on what date; and also when did Mr. Morgan sell? My understanding is that there was considerable time between those transactions. If you have the dates there, I would like to have them.

Mr. CLEMENTS. I can take an extract from the testimony taken in that case and send it to you; but I could not give you the dates here. It is somewhere about two or three years ago that that was heard. But there was a limit on the option, and as I remember the testimony, the whole matter was fixed up before the option ran out.

Senator CULLOM. Mr. Morgan was away, I think, when one of the transactions took place, and if you can furnish the data I would be glad to have you do it.

Mr. CLEMENTS. I can furnish that. It was some couple of years ago, I think, speaking from memory.

Senator CLAPP. Was there an investigation by the Commission?

Mr. CLEMENTS. Of this matter?

Senator CLAPP. Yes.

Mr. CLEMENTS. Yes, sir.

Senator CLAPP. How did that come out?

Mr. CLEMENTS. The railroad commission of Kentucky instituted a complaint before the Interstate Commerce Commission in respect to these matters.

Senator CLAPP. What was that based on? I am simply asking for information.

Mr. CLEMENTS. I do not remember now all the grounds on which

that investigation was based. It was a complaint from the railroad commission of Kentucky to the Interstate Commerce Commission, and I should say, from memory, that it involved the allegation of unreasonable rates brought about by combinations. There was a good deal said in the case about some combination in violation of the laws of Kentucky.

Senator CLAPP. Have there been any rates changed?

Mr. CLEMENTS. I do not remember about that. This testimony was brought out in this way: When the railroads answered this complaint made by the Kentucky commission they set up that it was a matter not within the jurisdiction of the Interstate Commerce Commission to interfere; at least a part of it.

Senator CULLOM. I suppose you referred to it more because it was a notable transaction, and a questionable one, than with a view to what effect it would have upon the country?

Mr. CLEMENTS. I referred to it simply to illustrate how it is that the fixed charges can be increased, and the public must meet the interest on stocks and bonds without any change in the property, and how it has been done in other cases. So that matters have gone so far that it is not safe to say that all these bonds and stock represent a bona fide investment, entitled to earn a profit.

And I want to say in reply to the Senator from Minnesota that both the railroads when they answered the complaints denied the power of this Commission to investigate the matter. I do not know whether that went to the whole complaint, but it certainly did to a part of it, and possibly to all of it. But when we met to take it up, one by one they withdrew that. Mr. Stetson, I think, and some of these others, said that they withdrew it, and they represented some of them, and they would be glad to disclose everything about the matter, and Mr. Baxter, representing the Southern, said the same thing, so that the testimony was given by common consent. I referred to it not for the purpose of impugning these men. They conducted what they considered a lawful transaction as the law stands. I spoke of it to show how the competition goes on in one form and another, but the competition is more or less diminishing, and therefore the greater the necessity of some sort of efficient regulation of rates.

Senator CLAPP. What have you to tell us about what use was made of that?

Mr. CLEMENTS. The Commission did not pursue it. They stated that they wanted to take it up again at Louisville, but they never did it, and the matter was left in that form.

Senator NEWLANDS. Do you think it would be wise to provide that stock and bonds of railroads engaged in interstate commerce should have to be approved?

Senator CLAPP. I would suggest that that has not been brought up by the witness, and according to our agreement, I think we ought to confine our inquiry to what he brings out at this stage, and bring these things up later.

Senator NEWLANDS. I think that it is pertinent.

Senator CLAPP. It is pertinent, but we had agreed to take these things up later. Of course, it is perfectly pertinent.

Senator NEWLANDS. Very well.

Mr. CLEMENTS. That happens to be a subject of larger dimensions, which I did not come here to discuss, but I am perfectly willing to

answer anything that I can on it. On this subject of consolidation, etc., I have some figures here further illustrating the processes by which it goes on steadily, and I have taken this simply because it is a striking illustration of the same consolidation and combination which must affect the limitation on competition. The Pennsylvania Railroad has $296,504,550 in stock, and the Pennsylvania Company, $40,000,000; the Baltimore and Ohio Railroad Company, $184,000,000; the Chesapeake and Ohio, $62,000,000; the Norfolk and Western, $89,000,000; the Philadelphia, Baltimore and Washington Railroad, $23,000,000; the Northern Central Railroad Company, $11,000,000. I am merely giving you the round numbers here without the odd dollars.

Senator KEAN. Is this the capitalization of the Pennsylvania Railroad?

Mr. CLEMENTS. It is the capitalization of these roads.

There are a great many other railroads in the Pennsylvania System. I am only speaking of these important lines. This includes the Pennsylvania Railroad Company and the Pennsylvania Company, the Baltimore and Ohio Railroad Company, the Norfolk and Western, the Chesapeake and Ohio, the Philadelphia, Baltimore and Washington, and the Northern Central. I have limited these to this number because they are very conspicuous and important roads and illustrate the manner in which these holdings are interlocked, so to speak, with these different roads. Of the stock of the Pennsylvania Company the Pennsylvania Railroad Company owns all—$40,000,000. Of the stock of the Baltimore and Ohio Railroad Company, which is $184,000,000, the Pennsylvania owns $51,000,000 and the Pennsylvania Company $16,000,000, the Philadelphia, Baltimore and Washington Railroad Company owns $1,781,000, and the Northern Central Railroad Company owns $1,781,000. Of the Chesapeake and Ohio Railroad Company, which is $62,000,000, the Pennsylvania Railroad owns $10,000,000, the Pennsylvania Company $4,000,000, the Northern Central Railway Company $1,500,000. Of the stock of the Norfolk and Western Railroad Company, which is $89,000,000, the Pennsylvania Railroad Company owns $25,000,000, the Pennsylvania Company $26,500,000, the Northern Central Company $1,500,000; and of the stock of the Philadelphia, Baltimore and Washington Railroad Company, which is $23,000,000, the Pennsylvania Railroad Company owns $23,000,000, with some odd figures—practically all. The Northern Central owns $352,000. The Pennsylvania Company owns $9,000,000. I have left off the odd figures generally.

Now, among the persons who are on boards of directors, one person, who is on the Pennsylvania Railroad Company's board of directors, is on 24 different boards of directors. Another person is on 17 boards, and so on. Some of these directors are on practically all of these boards of directors. For instance, Mr. Barnes is on the directorship of the Norfolk and Western road, the Baltimore and Ohio, the Pennsylvania Company, and the Pennsylvania Railroad Company, but not on the Chesapeake and Ohio. Mr. McRae is on the Pennsylvania Company, the Pennsylvania Railroad Company, the Baltimore and Ohio, and the Norfolk and Western. And so it goes. I have these statements, which illustrate how the management of these roads is in the hands of the same men.

Senator KEAN. Do you intend to put those statements in?

Mr. CLEMENTS. Yes; I will put them in if they are acceptable.

Senator KEAN. Those are very well managed properties, I presume?

Mr. CLEMENTS. I presume so. I am not questioning that. But I think it is a legitimate inference that when the same or many of the same people are on the boards of directors of each one of these roads, or all but one, that they are not as likely to indulge in competition with one another as they were when they were separate and distinct and independent. That seems to be a reasonable inference.

Senator NEWLANDS. Hence you would not expect any reduction to take place by competition such as has hitherto taken place?

Mr. CLEMENTS. That is exactly the issue that I make in these things; that is what I call to your attention. I see Senator Gorman is on one of these, as well as another gentleman, whose name I can not find here now.

Senator KEAN. Is Senator Gorman on there for the State of Maryland, as a State director?

Mr. CLEMENTS. Mr. Gorman and one other man are here as representatives of the State of Maryland. That was what I was proceeding to state. I wanted to state the fact in the record. They are there as representatives of the State and not in any personal capacity.

Senator KEAN. You think that the service to the public of the Pennsylvania Railroad is good?

Mr. CLEMENTS. Good?

Senator KEAN. Yes.

Mr. CLEMENTS. They have undoubtedly good service. I think they complain at times that they are very greatly congested and need more rolling stock, and I know at times they have been so. But I am not making any contest here that they do not render good service, and I am not making any contest for the confiscation of these stocks or bonds or trying to impugn any man here because he is on two or three of these boards. That is under the law, and I suppose that it is legitimate; but I am speaking of it as a continuous and a growing condition which tends, as every man must recognize, I think, to the limitation of competition upon which the public is supposed to rely for protection against unreasonable and extortionate rates. We are constantly told in these hearings that there is no danger of the railroads putting on excessive rates, for several reasons. In the first place, because it is against their interest to do it; in the second place, because the force of competition is such that it is practically impossible to do it anyhow. Now, the Senator from New Jersey called my attention when I commenced—and I intended to speak of it soon—to this statement found in a report made by the Commission in a case concerning——

Senator KEAN. Strawberries?

Mr. CLEMENTS. Strawberries; yes, sir.

Senator KEAN. Rates from Florida?

Mr. CLEMENTS. Yes. This was reported by Commissioner Veazey, and in that report it is said:

> Notwithstanding the Commission has held from the time of its organization to the present time that the statute requires it to ascertain and determine what the reasonable maximum rate is, on a complaint alleging violation by reason of excessive freight charges, yet some carriers continue to deny the soundness of this view of the law. But under the renewed presentation of this argument,

it still seems plain to us that regardless of where the general power to establish rates may be lodged, the ascertainment of a reasonable rate where extortion is charged necessarily involves the determination of how much an existing rate is in excess of what is reasonable.

Senator KEAN. That was in 1892.

Senator NEWLANDS. What case is that?

Senator KEAN. That was the Strawberry Case.

Mr. CLEMENTS. Decided in January, 1892. That was a complaint made before I was a member of the Commission. I was only calling your attention to that case because of the statements that have been made as to whether or not that power of the Commission had been questioned prior to the statement of Mr. Morrison. I want to print what Mr. Morrison said in here. What the Commission said was written and penned by Mr. Morrison, and I want you to understand that thoroughly, that Mr. Morrison did not say that nobody questioned its power. What he said was that no member of the Commission ever officially expressed any other view or ever failed to join in the action which was taken, beginning with the case which was commenced the second month after the Commission was organized, and as to that, no railroad company filed in any answer a contest about this question for the first ten years that the Commission was running. That there was some argument and talk here and there about it I have not denied, of course.

Senator CLAPP. The time has come for adjournment now. We can not get through with you before dinner this evening, Mr. Clements, so we will take a recess, and if it suits your convenience and that of the Commission we will be pleased to hear you further at 11 o'clock to-morrow morning.

Mr. CLEMENTS. I thank you. I have but little more to say, and I will be here then.

Resolution of the commercial committee and business men of Mitchell, S. Dak.

Whereas we fully realize that our achievements, from a commercial and industrial standpoint, have been attained very largely by reason of the railways that have entered our territory and State, and which have contributed to the upbuilding of our cities, towns, and villages and the development of our industrial resources, to the west of us are hidden commercial resources, and there is much to be developed in our State which depends upon these railways increasing their mileage, thereby inviting immigration and building up our commercial industries, which otherwise will lie dormant. We desire to express our appreciation of these great railway lines, which have afforded us such splendid advantages and which gives us promise of the immediate development of our western territory by giving us new lines of railroads which will widen their market area, and while increasing their business thereby give to our people additional advantages, and which in response to their demands of increasing trade will lower the rates of transportation.

Whereas an attempt is being made to take from these railway companies the power to establish their own rates and place it in the hands of a political commission, which we fear will result in disaster to South Dakota and tend to injure our future immediate development, we believe that the present transportation rates, under the control of

the interstate-commerce law, are well and generally observed; that the present law is ample to correct any possible evil, and that whatever complaints arise, if any, are not by reason of any present existing tariff rates, but more from the want of an enforcement of our present laws, and that all that remains to correct such evils is the fearless and impartial enforcement of the laws as they stand to-day. While the transportation lines have profitably conducted their business, we feel that in the main our business with them has been satisfactory to us:

Resolved, That we, the commercial committee and business men of Mitchell, S. Dak., are opposed to any interference by further legislation aiming to take from the control of the railway lines the establishing of their tariff rates and placing the same in the hands of a political commission.

The commercial committee:

H. C. Preston, *President.*
A. B. Hager, *Secretary.*
J. L. Morrow.
Robt. Burns.
D. A. Mezener.
H. R. Kibber.
Wm. M. Smith.
T. C. Burns.
Geo. E. Foster.
W. W. Milne.
C. E. Newbury.
O. L. Branson.
L. J. Welch.
C. E. Reeves.
L. O. Gole.
O. B. Wilt.
E. J. Quigley.
M. F. Patton.
E. F. Reamer.
R. J. Lawrence.
W. R. Ball.
W. E. Crane.
S. G. Boyce.
T. F. Graham.
J. E. Wells.
W. H. Conyes.
J. G. McCartney.
R. N. Kratz.
H. G. Nichols.
O. E. Cassem.
A. B. McKeel.
Sam. T. Greene.
C. E. Calvin.
H. B. Anderson.
O. D. Stearns.
H. L. Bras.
J. M. Kuhn.
Geo. A. Silsby.
Joseph Harker.
D. C. Braught.
D. J. Noble.
Harvey Noble.
D. B. Miller.
C. W. Johnston.
S. J. Moore.
W. H. George.
I. W. Seaman.
C. R. Norris.
W. A. Branch.
C. W. Downey.
J. D. Anderson.
S. H. Scallin.
E. R. Storer.
J. E. Turner & Son.
Jacob Beeker.
Delvan Becker.
Joe L. Lovinger.
D. C. Bayley.
Jas. Lyons.
W. H. Barber.
M. S. Kern.
J. K. Smith.
W. A. Heinberger.
L. F. Geiger.
I. Fogarty.
C. W. Adams.
Fred Madehase.
B. M. Johnston.
P. D. Moran.
W. S. Doolittle.
H. D. Butterfield.
J. S. Wingfield.
Chris Footett.
J. A. Jolly.
B. A. Babb.
L. M. Simons.
J. G. Markham.

STATEMENT OF MR. FREDERICK EDWARD LYSTER.

Senator CLAPP. Will you please state your name and occupation?

Mr. LYSTER. I am a manufacturer of linseed oil, at Fredonia, Wilson County, Kans.

Senator CLAPP. Now, state, in a general way, the extent of your business.

Mr. LYSTER. Two thousand cars per annum.

Senator CLAPP. Now, will you state what you desire to tell us upon the issue before the committee here?

Mr. LYSTER. In order to preface that matter I will state that I have been, during my active manufacturing career, a competitor of two large so-called trusts—the Standard Oil Company and the American Linseed Oil Company—and I find that while there is much misunderstanding as regards the terrors of these trusts in active business operations, so there seems to be quite a little misunderstanding as to the terrors of the railroad question from the shippers' standpoint. The gentleman who preceded me here, a member of the Interstate Commerce Commission, seems to be under the impression that the shipper impugns the honesty of his Commission. On the contrary, we do not question the honesty of the Commission; but we do doubt their ability to deal promptly and efficiently, from the shippers' standpoint, with the various questions that arise from day to day in the shipping interests. In the business in which I am connected, sir, we have a great many things to contend with. The business is known as a telegraphic business. The markets change frequently. The product is grown in many countries, and the markets to-day, of all the products we make, are dominated by the European markets. So that having this complication entering into our business is at once a matter of grave consideration, and therefore, under these circumstances, as an individual manufacturer and from the standpoint of those manufacturers I have talked with, I would rather work under the existing conditions of the railroads than under any possible plan that could be devised whereby the power to make a maximum rate should be placed in the hands of any one body of people. I believe, sir, that is all that I have to say on the matter.

Senator KEAN. You are from Kansas?

Mr. LYSTER. Yes, sir.

Senator KEAN. Is there much sentiment in Kansas for the regulation of railroad rates by legislation?

Mr. LYSTER. Not from any of those who have any knowledge of the subject. There is quite a little clamor from people who never ship a carload of anything. The agitation, I fancy, is by newspapers and professional politicians who have some interest in the matter. But I have never met a shipper, large or small, who had been very long in the business and established his right to be in business, who had any question about this matter at all, or who had any complaint to make about the treatment of the railroads.

STATEMENT OF MR. ARCH McGREGOR.

Senator CLAPP. Please state your name, age, residence, and occupation.

Mr. McGREGOR. I live in Springfield, Mo.; I am in the wholesale hardware business at that point. I also represent quite a number of jobbers from the same city.

We are being fairly treated by the railroads in our section of the country, and have no special complaint to make about our freight rates, and we are opposed to any change that would place the rate making in the hands of the Commissioners. We would rather that it would remain where it is. The people who make the rates in our section of the country are thoroughly familiar with the conditions and surroundings, and the country is getting ahead, and we are fairly prosperous; and for that reason, if for no other, we do not care about taking any risk in the matter.

Senator KEAN. Do you hear in Missouri any great clamor in regard to additional legislation?

Mr. McGREGOR. No; I can not say that I do.

Senator KEAN. You have heard it?

Mr. McGREGOR. There is always more or less talk about it and always will be. I do not know that I can hardly say who——

Senator KEAN. The shipper—it is from the shipper?

Mr. McGREGOR. If the price of wheat goes down the farmer generally kicks and lays a good deal of it to the railroad companies. I don't know whether that has anything to do with it or not. Now, the shippers are fairly well satisfied. We have no trouble down there in meeting competition, and that being the case we have no special complaint to make. Any time we have had any trouble and have taken it up with the railroad companies they have given us a fair hearing and have put us in a position to do business all right.

Senator KEAN. Then the railroads have always given you a square deal?

Mr. McGREGOR. Not all the time; I do not want to go on record as saying that, but I will say that when we have had a good, fair case and presented it to them we have gotten justice, and especially has it been so in the last four or five years.

Thereupon, at 5.10 o'clock p. m., the committee took a recess until 7.40 p. m.

EVENING SESSION.

The committee met pursuant to the taking of recess.

STATEMENT OF MR. L. M. MILLER, OF KANSAS CITY, MO.

Senator KEAN. Please state your name and residence.
Mr. MILLER. My name is L. M. Miller, Kansas City, Mo.
Senator KEAN. And what is your occupation?
Mr. MILLER. President of the Commercial Club of Kansas City, Mo.
Senator KEAN. But you have an occupation?
Mr. MILLER. I am in the flouring, the milling business.

Senator KEAN. And what bodies do you represent, what commercial organizations?

Mr. MILLER. The Commercial Club of Kansas City.

Senator KEAN. Will you please go ahead and make your statement to the committee.

Mr. MILLER. As president of the Commercial Club of Kansas City, representing a membership of about 1,000 of the leading commercial and manufacturing interests of Kansas City, employing a capital of not less than $85,000,000, I have to say that our club, after having given the Esch-Townsend bill very careful consideration, adopted a resolution that this bill should not be passed in its present form.

As a whole our community is satisfied with the present rates and with the present rate-making conditions, and the few exceptions are that certain concerns are believed to be favored by the railroads in certain ways, either by rebates or concessions, consequently we believe in a uniform system of railroad bookkeeping, subject at all times to the inspection of the Interstate Commerce Commission, somewhat similar to that used in our national banking system.

I am in the flour milling business at Kansas City, the second largest milling center in the United States, and as we have a large surplus of wheat, we consequently have more milling capacity than is required for the domestic consumption, this surplus of wheat and flour has to be exported, where in most instances it comes into competition with the world's markets.

Supply and demand, coupled with rates, regulate prices, consequently the value of wheat and flour fluctuates from day to day, and rates must be made to harmonize with local conditions in order to meet competition from other countries.

Were we obliged to await the changes of rates to the seaboard by a commission for this purpose, whose action, in consequence of the large volume of business, would necessarily be slow, the interest and insurance on the large stocks of wheat or flour would deter any one from accumulating same unless on large margins, which would necessarily have to be borne by the producer—the farmer. Therefore rates must be left to be made as they are now made, but with such restrictions that no one shipper can in any way be favored.

Senator KEAN. You spoke of rebates and discriminations. Do you believe certain parties are receiving rebates and discriminations?

Mr. MILLER. I base that statement up this fact: That nearly every railroad running out of Kansas City or any other large center will build an elevator for grain men, and those particular grain men do the business over that line. They are paid a certain price for handling this wheat through the elevator. What that is we are not able to learn, because it is done under their private contracts. Now, whether these people are favored—we believe they are favored by someone——

Senator KEAN. You do not believe that they are favored in the rate on their grain, but you believe that they are favored in some way through elevator charges or something of that kind?

Mr. MILLER. Yes, sir.

Senator KEAN. Now, on what roads?

Mr. MILLER. Take the Chicago, Milwaukee and St. Paul out of Kansas City——

Senator KEAN. They have their own elevators?

Mr. MILLER. They have an elevator which they own and which is operated by grain men who do not own the elevator.

Senator KEAN. Operated by whom?

Mr. MILLER. By men who do not own the elevator. Take the Missouri Pacific Railroad. It has built an elevator, and it is operated by men who do not own the elevator. They are large shippers. Take the Maple Leaf. It has a large elevator. That elevator is operated by people who do not own it. The elevator is owned by the railroad people.

Senator KEAN. Then you think, on the whole, that rates are fair at the present time?

Mr. MILLER. Yes, sir.

Senator KEAN. As far as you know, there are no rebates or discriminations made other than those you have indicated?

Mr. MILLER. No, sir.

Senator KEAN. And would the Elkins law, if properly enforced, in your judgment, cover all these cases?

Mr. MILLER. I think it would.

Senator KEAN. This is, I understand it, the unanimous sentiment of your organization?

Mr. MILLER. Yes, sir.

Senator KEAN. And generally of the people of Kansas City?

Mr. MILLER. Yes.

Senator KEAN. Have you heard many complaints in Kansas City?

Mr. MILLER. No, sir.

Senator KEAN. Have you heard any of any moment? Of course there are always some complaints everywhere.

Mr. MILLER. None outside of these that I have made reference to.

Senator KEAN. We are much obliged to you for your statement.

STATEMENT OF MR. H. B. TOPPING OF KANSAS CITY, MO.

Senator KEAN. Please state your business.

Mr. TOPPING. Wholesale implements; and I am a manufacturer.

Senator KEAN. And whom do you represent?

Mr. TOPPING. I represent the Commercial Club, as chairman of the Trade Extension Committee, and am also president of the Kansas City Vehicle and Hardware Club, and speak for them.

Senator KEAN. What is the amount of your business?

Mr. TOPPING. About $40,000,000 per year in volume. We realize, gentlemen, that you have had a strenuous day, and our remarks will be very brief.

Kansas City is the largest distributing center of agricultural implements, vehicles, and wagons in the world. I have the honor of being president of the Kansas City Implement, Vehicle, and Hardware Club, a business organization that has had much to do with the rapid development and growth of the agricultural interests of the great Southwest. We supply the machinery to the farmer with which he tills the soil and produces the great crops of wheat, corn, cotton, and hay. We have about 200 manufacturers and jobbers in our line doing business in Kansas City; the volume aggregating many millions of dollars and many thousands of carloads of goods annually.

We are not in favor of any change in the Interstate Commerce Laws, especially in regard to rate-making. We believe the present laws are sufficient to correct the evils, if rigidly enforced.

Oklahoma and Indian territories, during the few years since settlement has been permitted, have built nearly 3,000 miles of railroad, and many miles are now in course of construction. New towns spring up almost in a night and in a few months become bustling young cities. New rates are constantly being promulgated that often require quick adjustment on account of local conditions. This is possible under our present laws, but we fear would, under the new law, necessarily require a long time and entail great hardship, and delay development.

Gentlemen, a half century ago there were no railroads west of the Missouri River. To-day we have at least 100,000 miles, and the wealth-producing center of our great country has moved westward. In Kansas City alone we have 18 railroad systems, with 32 distinct lines. Annual bank clearings of 1,000 million dollars; 2,289 factories. The country tributary produces 51 per cent of all the corn, 40 per cent of the cattle, 45 per cent of the cotton, and 21 per cent of all the wheat raised in the United States. All this growth has come under the present laws regulating the railroads. We do not think it safe to disturb the present conditions, and ask you to report unfavorably on this bill. I thank you.

Senator KEAN. You say Kansas City is the largest center for the distribution of agricultural implements in the United States?

Mr. TOPPING. Yes, sir; the largest in the world.

Senator KEAN. I knew Kansas City was great for some things, but I did not know it was first in that respect. What do you know about rebates or discriminations?

Mr. TOPPING. Well, sir, we have heard no complaints in our line of business. Under the Elkins law we are getting along nicely over there. As president of the club I have heard no complaint from any of our members.

Senator KEAN. And you ship how extensively?

Mr. TOPPING. Well, sir, the tonnage in our line of business will amount to about thirty carloads per annum of farm machinery.

Senator KEAN. And chiefly in what States?

Mr. TOPPING. Western Missouri, all of Kansas, all of Oklahoma and Indian Territories, and Colorado and New Mexico.

Senator KEAN. Are the people there generally satisfied with the rates of freight?

Mr. TOPPING. Yes, sir.

Senator KEAN. And the charges made by the railroads?

Mr. TOPPING. Yes, sir.

Senator KEAN. And you have heard of no discriminations or rebates?

Mr. TOPPING. No, sir; I have not. We have been able to adjust all differences with the railroads in a very satisfactory manner.

Senator KEAN. Have you ever had any differences with the railroads?

Mr. TOPPING. Yes, sir.

Senator KEAN. How were they settled?

Mr. TOPPING. Well, through our traffic managers, by mutual arrangements.

Senator KEAN. Did you gentlemen get what you wanted?

Mr. TOPPING. Yes, generally.

Senator KEAN. Or partially what you wanted?

Mr. TOPPING. Usually a happy compromise if not all we wanted.

STATEMENT OF MR. W. C. TRICKETT, OF KANSAS CITY, MO.

Senator KEAN. State your residence.

Mr. TRICKETT. Kansas City, Mo.

Senator KEAN. And what is your occupation?

Mr. TRICKETT. I am commissioner of the Kansas City Transportation Bureau.

Senator KEAN. What is the Kansas City Transportation Bureau?

Mr. TRICKETT. It is an organization maintained by the commercial and manufacturing interests in Kansas City to protect the city in all matters concerning transportation.

Senator KEAN. Will you make your statement?

Mr. TRICKETT. The committee of which I am a member comes from the West, that part of our country which produces a large portion of the wealth of this great nation. The agricultural interests are so diversified and the production of farm products so extensive that the markets of the world are necessary to the welfare of our people.

My entire business life has been devoted to freight traffic work, and I have long since been convinced that the subject of rate making is highly technical and extremely complex, and while not directly connected with the railroad service, I believe that the interests of the West would be best conserved by having those of ripe experience in traffic remain in control of the situation, subject to regulation by existing laws.

I maintain that freight rates are not made entirely by traffic officials, but that they make themselves and are largely supervised and promulgated by the carriers. Many rates, perhaps a majority, are the result of competition and are an adjustment based upon actual and practical experience, admitting of elasticity in meeting changing conditions as emergencies arise.

The only substantial complaint on part of shippers throughout the country is that certain shippers are favored, directly or indirectly, so that in the end rates are not actually the same for all, and, gentlemen, I believe the solution of this problem is the strict enforcement of the Elkins law.

Manufacturing and jobbing centers are interested in the relative adjustment of rates rather than in the volume thereof, while the producer is under all circumstances seeking the lowest rate obtainable commensurate with good service, which brings us down to the point that the making of rates throughout the United States should not be delegated to any body of men.

It is the opinion of many prominent traffic officials and students of transportation that freight rates throughout the United States will never be adjusted to the satisfaction of the entire shipping public. Constantly changing conditions and the struggle for commercial

supremacy precipitates frequent complaints of alleged unjust discrimination between individuals and localities. The situation has doubtless prompted many commercial organizations to indorse different measures calculated to obtain aid or relief at the hands of Congress, and may explain, in part at least, the numerous signers to the petition which was presented at the last session.

The organization I represent on this occasion, the Commercial Club of Kansas City, does not act mechanically; they think for themselves, and having thoroughly considered a proposition from their point of view, they hew to the line, let the chips fall where they may.

Therefore, after careful investigation by a committee composed of fifteen representative business men engaged in various branches of trade, an indorsement of the proposed measure was deemed inadvisable, and I am here to voice their action. While I believe it to be generally conceded that no factor is so potent in the development of commerce as prompt and economical means of transportation, there seems to have been during several years past a demand for railway legislation, both State and national. This has been incited largely by almost constant agitation, but I believe that the people are now taking a deeper interest in the subject and are beginning to realize that conservative regulation of the great arteries of commerce is far preferable to radical legislation.

Reasonable competition between carriers with rigid adherence to lawfully published tariff rates is all that any shipper or community requires in the daily conduct of business, and under such conditions the various controversies which must of necessity arise between shipper and carrier could and should be adjusted without invoking the aid of State or Federal authorities. It is my judgment that if the act to regulate commerce is amended as proposed, the Interstate Commerce Commission will find itself inundated with complaints of alleged discrimination. I believe it would be thoroughly impracticable to promulgate a system of maximum rates for the United States without seriously localizing business of large trade centers. To rule upon specific rates would invade more territory than that embraced in the original complaint. It may be argued that this is not contemplated by the Esch-Townsend bill or that no such extensive reform will be attempted Conceding this to be true, it is apparent that a mandatory order affecting rates between two or more points may involve a vast area doing perhaps infinitely more harm than good. To illustrate: A reduction in rates from St. Louis to Oklahoma City could not be confined to the two points named, as under established differentials corresponding reductions would of necessity follow from Mississippi River points, Chicago, Memphis, Missouri River points, and other trade centers, and would affect the greater portion of the Oklahoma and Indian Territories, owing to competitive conditions which exist in that locality. Any change in rates on grain, say, from a point in Kansas to Chicago, would necessitate corresponding changes to all markets on both domestic and export business. This is due to the fact that rates from the grain-producing territory west of the Missouri River to the Atlantic seaboard are predicated on the Mississippi River combination, and rates to Gulf ports are made upon agreed differentials under South Atlantic ports. Additional illustrations of a similar character could

be cited. Indeed, it may be said without fear of successful contradiction, that except in purely local territory, the results would be as stated.

A practical illustration of what served as a mandatory order by the Interstate Commerce Commission may be found in the case of the wholesale grocers of Wichita, Kansas, *v.* The Atchison, Topeka and Santa Fe Railway and others, decision in which was rendered January 17, 1905. The complaint alleged discrimination against the city of Wichita, but was in reality directed against jobbers located on the Missouri River, yet the latter were not made defendants and received no official notice whatsoever. Their first intimation of the complaint was received on December 27, and the hearing took place in Chicago two days later. The limited time in which the Missouri River people had to prepare themselves rendered their representation inadequate and their evidence incomplete, yet these same business men were in the territory years previous to their interior competitors, and their trade was jeopardized by the attack. The decision required a reduction of 7 cents per hundred pounds in the differential to Wichita under the Missouri River, which, if enforced, would have been sufficient to exclude all outside competition, and had it not been for prompt action on the part of the Missouri River jobbers they would have sustained a heavy loss of business. The injury was, however, averted by a reduction in local rates from Kansas City, Leavenworth, Atchison, and St. Joseph necessary to meet the reduction ordered by the Commission, and practically all stations in Kansas and Oklahoma were involved in the revision, although the original complaint covered but one point.

Except for certain evils which have been repeatedly referred to in this investigation, I believe the present law adequate in its provisions to protect all individuals and localities against unjust discrimination.

It is certainly preferable for those having grievances to seek amicable adjustment with the one or more lines of railway interested, appealing to the Interstate Commerce Commission only as a last resort. When a formal complaint is filed, all interests involved should be given opportunity to be heard, and the decision rendered as speedily as possible.

In comparatively few cases investigated and decided by the Commission is the decision and order of that honorable body disobeyed. This sustains the belief that it is not necessary to invest the Interstate Commerce Commission with additional rate-making power.

The maintenance of railroad associations not at variance with the act to regulate commerce should not, in my judgment, be construed as a detriment to the shipping public. Representatives of lines from different territories should be permitted to meet and confer upon subjects of common interest the same as men in other branches of business. Personally, I know that shippers, or their representatives, are permitted and, in fact, often requested to appear before these meetings and argue orally petitions which have been previously filed. The difficulty of obtaining uniform action by communicating with individual traffic officials is apparent, and inasmuch as the concurrence of all lines is necessary to avoid disturbance in rates it would seem that the maintenance of associations, as previously referred to, should be legalized.

In appearing before this committee in opposition to the proposed legislation, I do not wish to convey the impression that Kansas City shippers have no grievances against railroads. Our shippers, through the organization which I represent, are constantly working towards securing adjustment of inequalities which arise from time to time and avoid appealing to our State commission or the Interstate Commerce Commission just as much as possible. In other words, we feel that it is the disposition of railroads to treat fairly with the shipping public, and that in a great majority of cases ordinary controversies can be settled between the two interests without invoking State or Federal aid.

In Kansas City and territory tributary thereto additional transportation and terminal facilities are badly needed, and our people do not wish to see the railroads so hampered by legislation as to retard this important work.

Senator CLAPP. In your statement you have said that you believe the present law adequate except in regard to certain things. You seem to indicate that evils have been referred to here which you do not believe the present law adequate to meet.

Mr. TRICKETT. That is correct.

Senator CLAPP. What are those evils?

Mr. TRICKETT. The private car lines, the switching arrangements, and terminal lines, which I understand can not be reached under the present law.

Senator CLAPP. Your understanding is that the present law would not reach them?

Mr. TRICKETT. That is my understanding.

Senator CLAPP. And they are the matters which are referred to here as not adequately met by the existing law?

Mr. TRICKETT. That is correct.

Senator CLAPP. You are the commissioner of the Kansas City Transportation Bureau. You must come in contact with the traffic managers and others in getting rates, and I will ask you whether they have ever offered you any rebates?

Mr. TRICKETT. Since the enactment of the Elkins law I do not know of any rebates that have been paid, with the possible exception of terminal charges and private car line charges.

Senator CLAPP. What is the nature of the rebates paid in the way of terminal charges?

Mr. TRICKETT. Certain industrial corporations have seen fit to build what are termed terminal lines or switching lines, and in the ordinary conduct of business the owners of these properties are accredited with a division of through rates from the initial points to point of destination. It has been frequently charged that the proportion accruing to the terminal lines is far beyond what that line should justly earn, and assume the nature of a rebate.

Senator KEAN. And what about switching charges?

Mr. TRICKETT. The propositions are somewhat similar in reference to switching charges.

Senator KEAN. That is, that factories, manufacturers, as I understand it, in Kansas City that have private tracks——

Mr. TRICKETT. I am not speaking of Kansas City; I am speaking of large industrial corporations in the East. I do not know of any

industry in Kansas City enjoying a rebate to-day, or any that have enjoyed a rebate since the passage of the Elkins bill, in any manner whatsoever.

Senator KEAN. Do packing houses in Kansas City have private tracks?

Mr. TRICKETT. To a very limited extent.

Senator KEAN. They have switches?

Mr. TRICKETT. They have switches, but they do not own terminal lines, such as the large corporations in the East own.

Senator KEAN. That is the only way that you think rebates are given at the present time?

Mr. TRICKETT. It is; yes, sir.

Senator KEAN. Or discriminations made?

Mr. TRICKETT. I know of no discrimination practiced aside from what I have stated.

Senator KEAN. Do you know anything as to the extent of those allowances for terminal roads and switching charges?

Mr. TRICKETT. I have a very limited knowledge of the allowances to those lines; but I understand the whole arrangement to be a matter of record on the part of the Interstate Commerce Commission..

Senator KEAN. We are very glad to have heard your statement.

Is there anyone else that wants to be heard for a moment?

STATEMENT OF MR. F. A. FOXON.

Senator KEAN. Where do you live, Mr. Foxon?

Mr. FOXON. Kansas City.

Senator KEAN. What is your business?

Mr. FOXON. Wholesale drug business.

Senator KEAN. And what is the extent of your business?

Mr. FOXON. We do a business of a million and a half.

Senator KEAN. Now, you may make your statement.

Mr. FOXON. Well, Mr.Chairman and gentlemen, I have no prepared address and no statistics to offer. I really indorse what my colleagues have said in the matter. I am a member of the Commercial Club and a member of the delegation present here, and I can only say in a general way that I myself as a shipper would rather deal directly with the railroads. While we have out there our troubles with the railroads, as they do, I suppose, in every other part of the country, we get along fairly well, and we recognize that the railroads have been the great force that has built up that country. So we naturally have rather a kind feeling towards them.

When I went to Kansas to live there was not a mile of railroad in the Territory; in fact, there was not a railroad within 150 miles of the Territory of Kansas. And you know what the mileage is now in that State. At that time there were less than 50,000 people in the Territory of Kansas; and you know what the population there is now. And the railroads have been the factors that have built up that great country.

I suppose if the railroad management had been in the hands of the Commission fifty years ago that we would have a very much smaller population in the country west of the Missouri River than we have now. As a resident of that section and as a shipper I believe that matters would be better left as they are at the present time. I think that if the Elkins law and the laws that we now have on the

statute books were enforced that all adequate protection would be given. I feel that this proposed bill is a sure and certain step toward Government ownership, which I am opposed to, and I would like to see the present laws enforced and see what the results would be. I believe they would be satisfactory.

That, I believe, Mr. Chairman, is all I care to say to-night. I would not further intrude on your time, because I know it is valuable.

Senator KEAN. We are very much obliged to you, and glad to know that Kansas City is so happy, contented, and prosperous.

STATEMENT OF MR. F. J. HEARNE, CHAIRMAN AND PRESIDENT OF THE COLORADO FUEL AND IRON COMPANY OF COLORADO.

The CHAIRMAN (Senator Elkins in the chair). What is the extent of the business of the Colorado Fuel and Iron Company as shippers—how many cars a year in and out?

Mr. HEARNE. We are engaged actively in the business over three or four States and Territories. Our market is from the Missouri River to the Pacific Ocean and from British Columbia to the Gulf of Mexico. We are producers of about 6,000,000 tons of coal annually, and about a million and a half tons of coke. These products are derived from 39 coal mines and about 3,500 coke ovens, besides a considerable product we market for other producers. We are also engaged in the manufacture of the various products of steel and iron to the extent of about 2,000 tons daily.

The CHAIRMAN. In addition?

Mr. HEARNE. In addition. Our inbound and outbound freights amount to about $1,000,000 a month.

The CHAIRMAN. How many lines of road do you ship over in and out—your main works are at Pueblo, are they not?

Mr. HEARNE. Yes. Our mines are at various places in southeast Colorado; some are in New Mexico, some in Utah, and some in Wyoming. We ship over all the lines, practically, in the West, excepting the Northern Pacific and the Great Northern; those lines we do not reach.

The CHAIRMAN. How long have you been familiar with the steel and iron business and the railroad business generally? As I understand it, you have had large experience as a railroad man as well as experience in the steel and iron business.

Mr. HEARNE. My experience began in 1867 as a civil engineer, and at that time I was chief engineer of a western railroad for five years, until 1872. From that time until the present I have been engaged actively in the manufacture of iron and steel—for about thirty-three years.

The CHAIRMAN. And were you interested in railroads—in the owning and building of railroads as well?

Mr. HEARNE. During the first five years, yes; from 1867 to 1872. We have in our outfit in Colorado 178 miles of railroad tracks, which are under my direction.

Senator KEAN. That is outside of any railroad system that is controlled by the Colorado Fuel and Iron Company?

Mr. HEARNE. It is practically controlled by the same interests as the Colorado Fuel and Iron Company.

The CHAIRMAN. What is the capital stock of the Colorado Fuel and Iron Company?

Mr. HEARNE. $46,200,000. There is $44,200,000 of common stock and $2,000,000 of preferred stock.

The CHAIRMAN. Now, so far as your experience goes as a shipper and manager of these great works, have you any reason to complain of rates being too high—excessive rates—or have the rates been satisfactory to you as a shiper?

Mr. HEARNE. My experience has always been, Mr. Chairman, that by coming in contact with the traffic managers of the carriers I have always been able to get what I was justly entitled to. I am not aware that I have ever been discriminated against. Sometimes matters have not come my way quite as promptly as I thought they ought to, but the managers have always risen to the occasion and have been solicitous of the district through which they have operated, and I think they have always done all reasonably in their power to promote the business interests of the communities with which they dealt. Where there is a mutuality of interests they usually succeed in coming to an arrangement satisfactory to both the parties concerned.

The CHAIRMAN. Generally, you are satisfied?

Mr. HEARNE. I am satisfied entirely.

The CHAIRMAN. Do you know anything about rebates or discriminations?

Mr. HEARNE. I do not, nothing, in my personal experience.

The CHAIRMAN. And you think that in the last two or three years rebates and discriminations have ceased?

Mr. HEARNE. I think they have entirely ceased. So far as they have come to my knowledge they have ceased since the passage of the Elkins law. I think that law has had a very salutary effect, and I think that if it is enforced it will give the shippers all the relief they care for.

The CHAIRMAN. You know the question pending before this committee and under investigation. The proposition is to confer, perhaps in a larger sense than under the present law, power to make rates upon the Commission. What effect would that have, in your opinion, and do you favor that policy or principle or not?

Mr. HEARNE. I am opposed to extending the rate-making power to the Interstate Commerce Commission.

The CHAIRMAN. Can you briefly state your reasons for your views?

Mr. HEARNE. Well, briefly, I do not believe that the Commission is capable, or that a commission can be appointed capable of handling the vast interstate-commerce affairs of the country. Those matters are now handled by a vast army of trained traffic managers who are experts in their lines, and I should look for a very serious disturbance of business relations and the satisfaction and comfort of doing business if those changes were made. I believe the effect on the railroads would be disastrous. It would be disastrous to the holders of securities. It would produce extreme conservatism ih new railroad construction, as well as in the purchases for operating purposes of existing lines. That in turn, I think, would be felt by every industrial establishment in the country. The railroads are very largely purchasers of material, and I think the fact of their retiring from the market as active purchasers would have a very decided effect on the active prosperity of the country.

The CHAIRMAN. There are complaints of abuses in the way of switching charges and terminal charges. To be more explicit,

switches of a mile or 2 miles, or a short line of a mile or 2 miles connected with industrial establishments of the country it is said get an arbitrary over the ordinary shipper, which is, in effect, a discrimination. Do you know of any such thing as that?

Mr. HEARNE. Our own personal relations to the railroads are that we have in the vicinity of Pueblo about 90 miles of trackage.

The CHAIRMAN. In and around your works?

Mr. HEARNE. Yes; and various belt lines, involving the expenditure of $2,500,000. When I say to you that we have not been able to pay fixed charges on those lines I think it answers the question and shows that we have not been getting any more than we are entitled to. No part of that revenue, however, finds its way into the treasury of the Colorado Fuel and Iron Company; it all goes into the treasury of the transportation company; it is not a part of the manufacturing company at all, although I happen to be president of those two systems.

The CHAIRMAN. In your business do you import from Europe at all?

Mr. HEARNE. No; only to a small extent. We are importers of ferromanganese to some extent, which comes in at the port of Galveston. Outside of that we have very little import business.

Senator KEAN. You say you have not been discriminated against?

Mr. HEARNE. Not that I am aware of.

Senator KEAN. Have you been discriminated in favor of?

Mr. HEARNE. No; we have not asked it. The fact is, sir, that we are the only interest of that character in that section of the country. So there is no one practically to discriminate against us, and there is no one for us to discriminate against. There is no other iron industry west of the Missouri River until you reach the Pacific coast.

Senator KEAN. There are coal interests, though?

Mr. HEARNE. The same rates are extended to all of our competitors that are extended to us, so far as I know.

Senator KEAN. Would you object to making a short statement of the so-called discriminations in the matter of the Colorado Fuel and Iron Company and the Santa Fe Railroad?

Mr. HEARNE. I would be very glad to do so. This matter has been brought about largely by sensational newspapers. The railroads there, of course, have been extremely anxious to build up that section of the country and have done all in their power to aid impecunious operators, and they had a policy some years ago of collecting pay for their coal products—their fuel. For instance, a mining concern will deliver 10 or 12 or 20 carloads of coal to a railroad company and at the end of the day's work, as soon as his bills of lading are signed, the agent of the railroad hands to the superintendent of the mines a sight draft upon the treasurer of his company, which is bankable at once. That avoids the delay of sending the fuel through to the consignee, with possible claims for short weight and poor quality, and that sort of thing, and then probably having to wait a month or two for him to get around to his pay day. Those settlements used to be made daily; now they are made weekly, and it is practically shipping the product with a sight draft attached to the bill of lading; in fact, it is a little quicker than that. Take Deming as the common basing point. The rate is $4.05 a ton; of which $1.15 is the value of the coal and the $2.90 is the cost of the transporta-

tion. It is understood by the railroad company, and it is understood by the shipper; it is understood by the buyer.

Senator KEAN. That is the station to which the coal of Phelps, Dodge & Co. is shipped?

Mr. HEARNE. Yes; that is delivered to them. Then there is an additional charge made. This coal is delivered to Phelps, Dodge & Co. at Deming with the $4.05 as advanced charges, of which $1.05 is for the coal. Then Phelps, Dodge & Co.'s road, the El Paso and Southwestern, have their rate, and when it is delivered to the consignee the entire amount of the freight, plus the price of the coal, is collected.

Senator KEAN. Is there anyone else competing for the coal business at Deming?

Mr. HEARNE. Yes; there are other shippers from southern Colorado.

Senator KEAN. And New Mexico?

Mr. HEARNE. And they have had the same rate, and we are selling the product of two other mines from New Mexico, and they are accorded the same privilege.

Senator KEAN. The claim was that the other people were charged $4.05—was that the rate?

Mr. HEARNE. I don't know; I suppose that you refer probably to the Gallup district in western New Mexico.

Senator KEAN. Yes.

Mr. HEARNE. I don't know anything about their troubles, except this: That their district is about 200 miles west of Albuquerque. Our district is about 200 miles northeast of Albuquerque, or more nearly east of Albuquerque, so that the district is entirely separate and distinct. The coal produced by them is a lignite, carrying not more than one-half of the thermal units that our high-grade bituminous coal in Colorado carries. If the railroads have not extended to them the same rate that they have extended to us in our district, I presume it is because the people at Deming and El Paso and in the copper districts of southwestern New Mexico and southeastern Colorado do not want that fuel at any price. A man can not afford to pay $4.05, or even $2.90, on material that only carries one-half the number of thermal units.

Senator CLAPP. Are you familiar with the existing law, the interstate-commerce law and its amendments?

Mr. HEARNE. I am in a general way; yes.

Senator CLAPP. You understand that under that law now if the rate is complained of, the Commission, if they find upon investigation that it should be done, can order its discontinuance?

Mr. HEARNE. That is my understanding, if they find any unreasonable rate or any unreasonable discrimination. My understanding, Senator, is that the word "reasonable" plays a very important part in the existing law. There may be a variance in rates, and there may be a slight discrimination, but if they are reasonable they stand; the whole thing turns upon the question of whether they are reasonable or unreasonable. I think the Supreme Court has so decided.

Senator CLAPP. I am speaking now of the power of the Commission. You understand that under existing law they have the authority to order any given rate discontinued?

Mr. HEARNE. Yes, sir; that is my understanding.

Senator CLAPP. And if the court sustains that order that rate must be discontinued?

Mr. HEARNE. Yes; but it is in the power of the traffic manager to state the new rate and not in the power of the Commission to do it.

Senator CLAPP. Yes; we will get to that in a moment. Now, the evidence that has been furnished here goes to show that as a general rule where the carrier obeys the order of the Commission in discontinuing the rate, or if the matter is carried into court and the order is sustained by the court requiring its discontinuance, the carrier, as a general rule, adopts for the new rate the rate suggested by the Commission. Is that your experience?

Mr. HEARNE. I think that is natural. Of course they must have some guidance for forming their judgment in the matter, and it is natural that they are guided by the judgment of the Commission.

Senator CLAPP. And if they did not establish a new rate in accordance with the suggestion, or approximately so, the Commission would again change the new rate?

Mr. HEARNE. Yes, sir.

Senator CLAPP. So that the practical experience, as shown by the records, is that with few exceptions they do adopt the rate suggested by the Commission. Now, are you aware that under the law as it now exists, as interpreted by the Supreme Court, if the complaint is based upon the claim that one point is discriminated against—I am not speaking now of the complaint upon the claim that a rate is per se unreasonable, but that it amounts to a discrimination against any point—the court will entertain a bill to abate that discrimination?

Mr. HEARNE. Well, if there is a discrimination, of course they will, but I can imagine——

Senator CLAPP. I think we will get along better if we deal now with the question of authority. The circumstances under which these things work out of course have their bearing upon the determination of the Commission and also upon the determination of the court; but I am speaking now of the question of authority. Then, as you understand the law, the Commission now has authority to abate a rate complained of as unreasonable, and in addition to that the courts will entertain a bill, if that complaint is based upon the claim that it amounts to a discrimination between two points. Now, then, so far as the mere authority which could be conferred upon the Commission—I am not speaking now of administrative features, as to when an order should take effect, or who could initiate rates, or the change of the long and short haul clause, but merely speaking of the additional authority which would be given to the Commission—it would be to make an order as to the new rate with the same legal force that they can now order the discontinuance of an existing rate. Do I make that plain?

Mr. HEARNE. I think so.

Senator CLAPP. Now, if that was done there would be nothing in that to prevent you from still going to the carrier in the first instance if you desired in case of any question between you and the carrier, would there?

Mr. HEARNE. Well, I would not like to see the final decision of a rate-making power in the hands of the Commission.

Senator CLAPP. Well, we will get to that presently. Conferring this additional power to name the substituted rate with the same legal effect that they can order a rate discontinued would not in itself

prevent you from still, if you had any question with the carrier. going to the carrier in the first instance, would it?

Mr. HEARNE. No; probably not.

Senator CLAPP. So that suggestion of itself does not involve taking away all rights of the opportunity of the shipper to go in the first instance to the carrier. Now, you say you would not like to see the rate-making power placed ultimately in the Commission. We already have the law which places in the hands of the Commission ultimately, subject all the time, of course, to review by the courts, the power to prohibit a given rate. We also have the law now, since the Elkins bill was passed, under which the courts, as interpreted by the Supreme Court, can entertain a bill to enjoin a particular rate when that complaint is limited to the claim that that is a discrimination. The additional power which the Commission might be clothed with, so far as the power to fix a rate independent of the administrative features of the law, would be to fix this new rate with the same legal effect, whatever that might be, subject to the review as it must be, as they condemn the existing rate. Now, I would like you to explain how the mere addition of that power would work any serious harm; that is, supposing that that power was lodged there to be invoked only when the shipper and carrier could not agree—how the lodging of that additional power would work any great hardship.

Mr. HEARNE. I think the case in sight makes the acceptance of the rate suggested by the Commission mandatory.

Senator CLAPP. Yes; that states it plainly. No more mandatory than the present condemnation of the rate.

Mr. HEARNE. There might be conditions under which it would be unprofitable, so that there should be some option to be exercised by them. I think it ought to stop short of being mandatory.

Senator CLAPP. Of course this involves the law on this question, and unless you understand it thoroughly I would rather not pursue it with you. Involving the law as it does, I would rather not pursue it unless you feel that you clearly understand the phase of the question that I am inquiring about.

Mr. HEARNE. Well, probably I do not.

Senator CLAPP. Well, I will not pursue it any further, then.

The CHAIRMAN. Do you export largely from your works?

Mr. HEARNE. No.

The CHAIRMAN. But your markets are long-distance points?

Mr. HEARNE. Our market is from the Missouri River to the Pacific Ocean, and you know enough of that country out there to know that it is a thousand miles to the next place.

STATEMENT OF MR. E. H. GARY, OF THE UNITED STATES STEEL COMPANY.

The CHAIRMAN. Please state your name, occupation, and place of residence.

Mr. GARY. E. H. Gary; I am president of the board of directors and a member of the finance committee of the United States Steel Corporation, and reside in New York City.

The CHAIRMAN. How long have you been connected with the United States Steel Company?

Mr. GARY. During and since its organization.

The CHAIRMAN. Now, Judge, tell me the extent of the shipments annually of the steel company, approximately, in tons.

Mr. GARY. 100,000,000 tons per annum.

The CHAIRMAN. How much does the company pay out in the way of freight?

Mr. GARY. We pay to outside railroads about $75,000,000 per annum.

The CHAIRMAN. When you say outside railroads—the steel company owns how much railroad itself?

Mr. GARY. A thousand miles or more. We own several railroads, but not very large ones.

The CHAIRMAN. You are acquainted with the freight rates generally that obtain on all the roads, and you are a shipper on nearly all the roads?

Mr. GARY. Yes.

The CHAIRMAN. Nearly all the railroads in the Middle West and East?

Mr. GARY. Yes, sir.

The CHAIRMAN. Are you generally, as a shipper, satisfied with the freight rates?

Mr. GARY. We are.

The CHAIRMAN. And have no cause of complaint that they are excessive?

Mr. GARY. We have not.

The CHAIRMAN. On the subject of rebates and discriminations, do you know of any rebates or discriminations in the last two or three years?

Mr. GARY. There are none so far as I know.

The CHAIRMAN. None given by the railroads or accepted?

Mr. GARY. None as applicable to our business.

The CHAIRMAN. There have been complaints made about terminal and switching charges. You know what I mean; there have been complaints of abuses of that kind. I referred to that in my question that I asked Mr. Hearne. Do you know of any of those abuses?

Mr. GARY. Yes.

The CHAIRMAN. To what extent?

Mr. GARY. We have one railroad particularly, the Chicago, Lake Shore and Eastern Railroad, at Chicago, which is spoken of—has been mentioned—by the Interstate Commerce Commission as a terminal railroad. I think the term is hardly a legitimate one, because that railroad has about 350 miles of track, not to be exactly accurate. It has about 10,000 cars. It has about 75 engines, and is a very costly property.

Senator NEWLANDS. How many miles of track do you say it has?

Mr. GARY. About 350; perhaps 360, owned and leased. Some of it is leased. That railroad has been receiving a division from the trunk lines bringing coke from the East to the Illinois Steel Works in Chicago. The capital stock of this railroad is owned by the Illinois Steel Company.

Senator NEWLANDS. That is one of the companies belonging to the United States Steel Company?

Mr. GARY. One of the companies belonging to the United States Steel Company, yes. A division has been allowed, and we have always believed that division to be fair and just and reasonable,

and not any more than was allowed to other connecting railroads under similar circumstances. However, the Interstate Commerce Commission lately, as is well known, rendered an opinion in which they stated the division allowed to the Chicago, Lake Shore and Eastern Railroad was excessive. That opinion was rendered without giving our interests any opportunity to be heard. I think it was the result of a mistake. When the Commission adjourned I understood it was stated of record that an opportunity would be given our railroad company to introduce evidence. That was overlooked and the opinion was rendered without that hearing. However, since that time we have had a great deal of discussion with the different railroad companies concerning this matter, and they have decided to reduce the amount of division to the Chicago, Lake Shore and Eastern. I suppose we shall accept that and be satisfied with it, although our people are still of the opinion that the amount allowed before was not unreasonable, and I think it can be shown to a demonstration that the amount allowed is not any more per mile than the rate established by the Illinois—what is the name of the warehouse commission?

Senator NEWLANDS. The railroad and warehouse commission?

The CHAIRMAN. The railroad and warehouse commission is the usual term.

Mr. GARY. Yes.

Senator NEWLANDS. That is the regulating body of that State?

Mr. GARY. Yes. We have in a few other places a few terminal railroads.

Senator NEWLANDS. I refer particularly to short switches of 2 or 3 miles in length.

Mr. GARY. We have three or four other terminal railroads such as you have referred to, but they are all of more than 2 or 3 miles in length.

Senator CLAPP. Such as the chairman is thinking of?

Mr. GARY. They are terminal railroads. Those railroads have been receiving $2.50 a car. In a recent decision of the Interstate Commerce Commission in Chicago, known as the "International Harvester case," that Commission decided that $3.50 a car was reasonable, I remember, and we have only been receiving $2.50; and that is no more than other railroads generally receive for similar service. I think the facts I have stated answer fully your question and show that we have not been receiving discriminating favors.

The CHAIRMAN. Then in all these various companies and manufacturing establishments you have no such thing as a switch of a mile or two in length which receives an arbitrary, which would be a discrimination in your favor?

Mr. GARY. We have not; no.

Senator NEWLANDS. You say your company owns the Chicago and Lake Shore—what is the name of the road?

Mr. GARY. The United States Steel Corporation is the owner of the capital stock of the Illinois Steel Company, and the Illinois Steel Company is the owner of the capital stock of the Chicago, Lake Shore and Eastern Railroad.

Senator NEWLANDS. Is that a common carrier?

Mr. GARY. Yes.

Senator NEWLANDS. It carries other products besides your own?

Mr. GARY. Yes; more or less.

Senator NEWLANDS. There has been no complaint regarding the division you receive on that railroad?

Mr. GARY. Not so far as I know.

Senator NEWLANDS. Now, as to the other small terminals you own, how many miles are they in extent?

Mr. GARY. The terminal railroads?

Senator NEWLANDS. Yes.

Mr. GARY. I can not give you the exact miles.

Senator NEWLANDS. Well, ranging from what to what?

Mr. GARY. From, say, 10 miles to about 75 miles.

Senator NEWLANDS. When you receive a division of $2.50 a car, do you mean that is for the entire distance of your terminal road?

Mr. GARY. Yes; for the entire service.

Senator NEWLANDS. Regardless of the distance?

Mr. GARY. Yes.

Senator NEWLANDS. You get the same amount for a 75-mile haul as you do on a 10-mile haul?

Mr. GARY. Yes, as applicable to those roads. There is no 75-mile haul, however, I would say.

Senator NEWLANDS. I thought you said they varied in length from 10 to 75 miles.

Mr. GARY. That is the aggregate trackage, but the haul would in no case be as much as 75 miles.

Senator NEWLANDS. How many miles in each case?

Mr. GARY. It would be a very short distance.

Senator NEWLANDS. Can you state it approximately?

Mr. GARY. No, I can not; because it is not the same. It is switching back and forth into the yards and different places of the yards.

Senator NEWLANDS. That, of course, covers the loading of the car, does it not—that $2.50?

Mr. GARY. Yes.

Senator NEWLANDS. As I understand it, in transportation there is a certain charge estimated for loading and unloading the car?

Senator KEAN. They load their own cars.

Mr. GARY. Yes; we load our own cars and deliver them to the trunk lines taking the freight from us, and coming in we take the car and bring it in and unload it.

Senator NEWLANDS. How many tons will each car hold?

Mr. GARY. That depends, of course, on the car; some are larger and some are smaller, but I think we handle about 5,000,000 cars per annum, and I have given you approximately the total tonnage.

Senator NEWLANDS. That would be 20 tons to the car, on the average. That would mean you get for each ton one-twentieth of $2.50, which would be about 12½ cents a ton.

Mr. GARY. I have given you the figures.

Senator NEWLANDS. And if there is a haulage of 3 miles on the average, that would mean 4 cents per ton per mile, would it not?

Mr. GARY. I do not think work of that kind is done by the mile. Of course I have given you the figures, and you can subdivide those figures to suit your own convenience.

Senator NEWLANDS. You say that the United States Steel Company owns the stock of the Illinois Steel Company?

Mr. GARY. Yes.

Senator NEWLANDS. How many different plants has that steel company?

Mr. GARY. Well, I would have to count them—of course there are a good many. Our annual report, which is very full, would give you all the plants in detail.

Senator NEWLANDS. Well, approximately?

Mr. GARY. The United States Steel Company, or the Illinois Steel Company?

Senator NEWLANDS. The United States Steel Company.

Mr. GARY. The United States Steel Company is the owner of the capital stock of various corporations who have different plants, and do you wish to know the aggregate of all the plants or the aggregate of the plants of any one corporation?

Senator NEWLANDS. No; I want to know the aggregate of all the plants owned by the United States Steel Company.

Mr. GARY. Seventy-five or a hundred, without attempting to be accurate.

Senator NEWLANDS. And has it as many terminal railroads as it has plants?

Mr. GARY. Oh, no; we only have a very few.

Senator NEWLANDS. About how many?

Mr. GARY. Three or four.

Senator NEWLANDS. And is the greatest production of steel at those plants where you have those terminal railroads?

Mr. GARY. Well, that would be true of the Carnegie Company; the Carnegie Company has the Union Railroad, if that is called a terminal railroad. How many miles of trackage has that [addressing Mr. Biehle]?

Mr. BIEHLE. Seventeen miles of road and about 75 miles of siding.

Mr. GARY. Seventeen miles of road and about 75 miles of siding.

Senator NEWLANDS. What is the average haul on that road in shipping steel to other parts of the country?

Mr. GARY. Well, Mr. Biehle could answer that better than I.

Senator KEAN. Is it not a fact that those 17 miles of road are used for bringing in the material to work in the furnace and factories?

Mr. GARY. Yes; and taking it out.

Senator KEAN. And then the track from the mill is used to take the rails out?

Mr. GARY. Yes.

Senator KEAN. It is 17 miles of road that comes in there that takes it all around their plant, all around the yard?

Mr. GARY. Yes, sir.

Senator NEWLANDS. I see. What I would like to know is the extent of the haul from your mill to the connecting road, which constitutes a part of the entire mileage.

Mr. GARY. I can not give you the distance. The distance, of course, is more or less irregular, depending on what road the freight is taken from or delivered to. The charge is not based on mileage at all, because it is based on time, on work, and the charge is low, I think you will find, in comparison with the charge for similar work by railroads all over the country.

Senator NEWLANDS. You say it is low?

Mr. GARY. Yes.

Senator NEWLANDS. Or high?

Mr. GARY. I say it is low.

Senator NEWLANDS. The amount that you receive you mean is low as compared——

Mr. GARY. Yes, sir; I have already stated that it is lower than the Commission in Chicago decided was proper in that case.

Senator NEWLANDS. In that particular case?

Mr. GARY. Which had less mileage, less track, and less work.

Senator NEWLANDS. And there they estimated that $3.50 was a proper charge?

Mr. GARY. Yes.

Senator NEWLANDS. You say you have not received any rebates of late years. Did your company ever receive any rebate?

Mr. GARY. "Ever" is a long time; I don't know that I can answer that.

Senator NEWLANDS. Well, within your knowledge?

Mr. GARY. No, not within my knowledge.

Senator NEWLANDS. Well, within the time you have been connected with the company do you know as a matter of fact, personally or through other information, that rebates have been received?

Mr. GARY. I do not know.

Senator NEWLANDS. You think that they were when rebates were a part of the system of the country?

Mr. GARY. I have not any doubt that in times past rebates in large amounts were paid by the railroads all over the country; but I became president of the Federal Steel Company when it was organized, in 1898, and since that time I do not believe that any rebates have been paid.

Senator KEAN. The Federal Steel Company was made up of the Illinois and Minnesota——

Mr. GARY. The Illinois and Minnesota Iron and the E. J. & E. and the Loraine Steel Company.

Senator NEWLANDS. What, in your judgment, has caused this cessation of the payment of rebates?

Mr. GARY. Well, I have no doubt the friendly disposition and consultations between the railroad companies and the manufacturing companies has had a good deal to do with it; there is no doubt about that. I know that is true in our case. As applied to railroads and shippers generally, of course the Elkins law has had a very good effect; there is no doubt about that. But going back to the time when the Federal Steel was organized, some of the highest railroad officials, the presidents of the railroads whose companies did a great deal of business for us, came into consultation with us and these questions were discussed, and we both agreed that we would rather do business on a business basis and a fair basis and we did not care for favors to ourselves provided they were not extended to other manufacturers in the same lines of business, and so far as our case is concerned I think that is the way that the previous system, so far as it existed, was abandoned.

Senator NEWLANDS. It was the sharp competition between those railroads for business that caused this system of rebates?

Mr. GARY. In years gone by, undoubtedly, I think.

Senator NEWLANDS. And that competition has been materially diminished by consolidation of the roads, has it not, and by community of interests, through influences of that kind?

Mr. GARY. I think it has largely.

Senator NEWLANDS. A great corporation like your own had it in its power, did it not, to offer a great deal of tonnage to a road that would give some advantage in rates over another road, and that was a temptation——

Mr. GARY. So far as our corporation was concerned, it has been forced to give the railroads all the business they could do, and more, too—all of them.

Senator NEWLANDS. But it could prefer, could it not, the road that would give the least rates?

Mr. GARY. The volume of business has been such that that has not been practicable.

Senator NEWLANDS. For how many years?

Mr. GARY. Certainly for the last three or four years.

Senator NEWLANDS. Yes, but I am talking about the period of rebates.

Mr. GARY. Oh, yes; if you go back long enough, certainly.

Senator NEWLANDS. I have been told by the traffic managers of some railroads that while they were reluctant to grant rebates, yet a concern that had a great tonnage at its disposal could force a rebate by offering its tonnage to the competition of two or three rival lines with a view simply of getting the lowest rate possible. Was not that so? Did not that condition exist?

Mr. GARY. That is a question that almost answers itself, because it would be perfectly natural.

Senator NEWLANDS. Perfectly natural as a matter of business?

Mr. GARY. Perfectly natural.

Senator NEWLANDS. Now, then, the competition having been diminished by the consolidation largely of these lines and the community of interests, the railroad officials have been able to bring about a gradual abolition of these rebates, have they not?

Mr. GARY. I think they have.

Senator NEWLANDS. Do you not think that has largely contributed to it?

Mr. GARY. I think it has; I think the great growth of business has perhaps largely contributed to it also.

Senator NEWLANDS. You say the great growth of business. Suppose we should have a period of depression again, and these great producing corporations who have this great tonnage at their disposal which rival lines were anxious to get as a matter of business, would not that likely bring about a renewal of this condition of rebates?

Mr. GARY. It might. That is, you mean a disposition on the part of the railroads who sought business to offer to some one who had freight some advantage?

Senator NEWLANDS. That would be a natural thing from a business point of view, would it not?

Mr. GARY. As a newspaper man I used to say there is lots of human nature in mankind.

Senator NEWLANDS. I think so. I do not think there is any question about that. You would not then regard the abolition of rebates or discriminations in the way of rebates as entirely secured, would you?

Mr. GARY. At the present time?

Senator NEWLANDS. Yes.
Mr. GARY. No.
Senator NEWLANDS. Likely to break out again?
Mr. GARY. It might.
Senator NEWLANDS. When you have a large amount of steel for export, have a surplus in this country and you want to export it, do you apply to those railroads for a special rate?
Mr. GARY. We have on one or two occasions.
Senator NEWLANDS. And in that case make the special rate, and then publish it for the period prescribed by law and it becomes a legal rate?
Mr. GARY. That has been done.
Senator NEWLANDS. Has not that been done sometimes in such a way as to take care of a particular shipment without inuring to the benefit of the entire shipping public?
Mr. GARY. I think not, so far as I know.
Senator NEWLANDS. It is not done for a particular limited time and for a particular shipper?
Mr. GARY. I know of no discriminations of that kind; no.
Senator NEWLANDS. It would be possible to do it, would it not?
Mr. GARY. Legally?
Senator NEWLANDS. Yes. You could first lower the rate by publishing a lower rate, and then, after the shipment was accomplished, you could advance the rate and publish the advanced rates—I mean the railroads could?
Mr. GARY. Could it be done in these cases any more than in other cases?
Senator NEWLANDS. It could be done in any case, could it not?
Mr. GARY. Perhaps so.
Senator NEWLANDS. And in that way an advantage secured to a large shipper?
Mr. GARY. If that is a practical question, you can, perhaps, answer that better than I.
Senator NEWLANDS. I want to ask you this: It has been claimed that the men who were interested in these great producing corporations, men of large wealth, have also become interested in the transportation systems of the country, and that the union of the control of both production in certain products and transportation would give them a great advantage. Do you think there is anything in that?
Mr. GARY. Well, I think the doctrine of community of interest in a measure has been a disappointment to some people, at least.
Senator NEWLANDS. But I am talking now not simply of the fact of the community of interests, but the practical control of many of the railroads of the country by the men who have been successful in bringing to their high efficiency some of these great industrial corporations. Now, when that condition exists, I want to ask you whether you think it is a condition that is really prejudicial to the interests of rival producers, whether it is possible to avoid under such a system preferences to the great producing and industrial corporations?
Mr. GARY. Well, I think, Senator, if one man was initially in the directory of a manufacturing company which had a large amount of business to give to a railroad corporation and was also an initial director in a railroad company that desired a commodity produced for transportation, that fact should be of benefit to both the railroad

and the manufacturing company. It does not appear to me that that is wrong legally or morally. I do not see why it is not perfectly legitimate if the railroad company received the regular published rate and no more. If the manufacturing company in that case pays as much to the railroad for the freight as any other manufacturing company would be compelled to pay, the mere fact that the railroad is willing to carry that particular freight or that the manufacturing company is willing and desirous of giving its business to that particular railroad instead of some other railroad does not seem to me to antagonize any law.

Senator NEWLANDS. We will grant that if there is an equality of rate and an equality of service.

Mr. GARY. That is what I am assuming.

Senator NEWLANDS. What I ask you is this: Is not that union of control likely to result in certain preferences being given either in the rate itself or in the service or in the administration in such a way as to give the rate-producing corporation that controls that road an advantage?

Mr. GARY. If that is equivalent to asking me whether or not pecuniary interest does not amount to a temptation, then, perhaps, I would have to answer your way; but it does not follow that there would be a result which is wrong, and I do not know that there has been any in our case.

Senator NEWLANDS. You have said that you had a road about 375 miles in length, called the Chicago, Lake Shore and Eastern Railroad?

Mr. GARY. Yes, sir. The Illinois Steel Company owns the system of that railroad.

Senator NEWLANDS. Between what points is that?

Mr. GARY. It is from Chicago to a point in Indiana in one direction, and then it has a leased right to Joliet, and then it has a leased right to Danville.

Senator NEWLANDS. What is the length of each one of those lines?

Mr. GARY. I can not give you the exact mileage.

Senator NEWLANDS. One hundred miles each, approximately?

Mr. GARY. They vary a great deal.

Senator NEWLANDS. Those roads do a business as common carriers and carry the products of the people?

Mr. GARY. Yes, sir; more or less.

Senator NEWLANDS. Were those roads built by your corporation, or were they purchased?

Mr. GARY. It was built. The Chicago, Lake Shore and Eastern Railroad corporation built the railroad. The capital stock, I think, has always been owned by the Illinois Steel Company. That is my impression.

Senator NEWLANDS. The road, then, was not in existence before the steel company organized its system?

Mr. GARY. I am not certain about that, because the road was incorporated before the inauguration of the industry.

Senator NEWLANDS. You say that you produce 100,000,000 tons of steel?

Mr. GARY. No, sir; I did not say that. No, no.

Senator NEWLANDS. One hundred thousand tons?

Mr. GARY. No, sir; that is a good deal of steel. I said that we

shipped in and out, all commodities, 100,000,000 tons. But our production is about 10,000,000 tons of finished steel.

Senator NEWLANDS. Ten million tons?

Mr. GARY. Yes, sir. We mine about 15 or 16 million tons of ore. We make that into iron and steel, and make various finished products.

Senator NEWLANDS. And you pay out about $75,000,000 annually for transportation?

Mr. GARY. Yes, sir.

Senator NEWLANDS. That is a little less than one-thirtieth of all the revenue of all the railroads of the country?

Mr. GARY. Well, you probably have the total. I have not.

Senator NEWLANDS. Yes; two billions is the total. Do you export very much of that steel abroad?

Mr. GARY. We are exporting now about 1,000,000 tons a year—at that rate.

Senator NEWLANDS. About one-tenth, then, of your entire product goes abroad?

Mr. GARY. I think so.

Senator NEWLANDS. Do you sell that product for less abroad than in this country?

Mr. GARY. Sometimes we do, and sometimes we do not. At the present time the prices are not materially different for the leading articles.

Senator NEWLANDS. How about steel rails?

Mr. GARY. I think we are getting, for export rails at the present time, approximately as much as we are for domestic use. Not quite as much.

Senator NEWLANDS. You get, in the countries to which they are exported, about the prices that you get in this country?

Mr. GARY. Nearly as much; not quite.

Senator NEWLANDS. And in that cost is included the export cost of transportation?

Mr. GARY. Yes, sir.

Senator NEWLANDS. Now, where do you transport to, mostly?

Mr. GARY. Where do we export? Where do we sell?

Senator NEWLANDS. Yes.

Mr. GARY. A great many neutral points. Africa, Japan, South America, and so forth, and so forth. Of course, we can not sell rails in Germany, where they make them.

Senator NEWLANDS. You do not export much to the continent of Europe?

Mr. GARY. Not very much. We sell more or less girder rails in England and Scotland—in Great Britain.

Senator NEWLANDS. Take Canada; do you sell rails there for less than you do in this country?

Mr. GARY. At the present time we are not selling any rails in Canada.

Senator NEWLANDS. Well, take your last sales.

Mr. GARY. The last sales made were at a less price than the domestic price.

Senator NEWLANDS. About how much?

Mr. GARY. I would think at least $6 a ton.

Senator NEWLANDS. Is the cost of transportation to Canada of

those rails less than it is for the same distances in this country, over the same distances in this country?

Mr. GARY. It would depend upon the direction. I would think certainly at some points it would be less, because carried by water a great portion of the way.

Senator NEWLANDS. How about the railroad transportation itself? Is that at a less rate than where the rails are to be sold for domestic use in this country?

Mr. GARY. As far as I know I think it is not.

Senator NEWLANDS. How is it with Mexico—do you sell rails there?

Mr. GARY. Yes; we have sold a good many rails in Mexico.

Senator NEWLANDS. Take the last rails you sold there—how much less than the railroads of this country were they obliged to pay?

Mr. GARY. I think the last rails sold there were sold for nearly the domestic price here; almost as much.

Senator NEWLANDS. Almost as much?

Mr. GARY. Yes, sir.

Senator NEWLANDS. Well, how near?

Mr. GARY. I would say within $2 or $3.

Senator NEWLANDS. Has the price in Mexico ever been $6 or $8 a ton?

Mr. GARY. Lower?

Senator NEWLANDS. Lower.

Mr. GARY. Yes, sir; it has.

Senator NEWLANDS. How is it that you are able to make them a lower price in Canada and Mexico than in this country?

Mr. GARY. Of course, that is a very large question. I presume that you are thoroughly familiar with it.

Senator NEWLANDS. No; I am not familiar with it.

Mr. GARY. Well, the manufacturer can manufacture a product at a materially less cost if his mills are kept full—if they are operated to their full capacity.

Senator NEWLANDS. Yes.

Mr. GARY. Sometimes it is advisable to use foreign countries for what we call a dumping ground. That is done by all manufacturers, more particularly Germany, but also England and other manufacturing countries. We can afford at times to sell a surplus product abroad at cost, or even less than cost, because of the reduction, as a total result, in the manufacture of that particular commodity in the mill, which is kept running to its full capacity; and the result is that it is beneficial to the manufacturer, and in the main beneficial also to the domestic consumer, because the manufacturer is able to produce a total result at less cost.

Senator NEWLANDS. When you say that the steel is sold abroad at cost or less than cost, I presume you mean that you would expect simply, in such a case, to get the labor cost without any profit to your capital?

Mr. GARY. Yes; yes. It might be in such a case. And then there is another reason which, of course, is obvious. We have, as you readily understand, a very large number of employees, aggregating something like 165,000 men. Now, if our mills are shut down at any time, in any particular locality, it is not only to the great detriment of the men themselves, but it is to our detriment, because our organization is interfered with, our men become disbanded and disorganized and leave us and go elsewhere, and it is decidedly for our inter-

est, and also in the interest of our workingmen, to keep our mills running all the time.

Senator NEWLANDS. Now, is your ability to sell at a less price to these outside countries dependent at all upon the fact that you receive lower rates of transportation for export than you do for your domestic steel?

Mr. GARY. Perhaps I do not fully comprehend your question; but it is because it is absolutely necessary for us to receive some lower cost of transportation, in order to get cost, or approximately cost, that the reduction is asked and received. If we had to pay, in other words—if at times we had to pay—the ordinary full tariff rate, the amount that we would receive for the particular commodity exported would be so small that we could not afford to do it. The loss would be too great. And it is because the railroads realize that it is decidedly for the benefit of the manufacturing company, the purchaser in general, and the workingman, and the people of this country, who get the benefit of all money that is brought from abroad in this country, that the railroads join us in that idea.

Senator NEWLANDS. Is that a standing rate, usually, for transportation——

Mr. GARY. No, sir.

Senator NEWLANDS (continuing). Or is it generally made to meet a particular emergency?

Mr. GARY. It is made at particular times.

Senator NEWLANDS. It is made at particular times?

Mr. GARY. Yes, sir. I do not mean to say for one particular day or month, or a particular commodity. But, depending upon prices, I mean, of a thing abroad. Of course our business is run for the interest of a stockholder. These other gentlemen are here. I do not know whether they could answer anything that I have not answered. Naturally their testimony would be very brief indeed, and if you could hear them now, they would like to be excused.

STATEMENT OF MR. J. KRUTTSCHNITT, OF CHICAGO.

The CHAIRMAN. Please state your residence and occupation.

Mr. KRUTTSCHNITT. Chicago. I am vice-president of the Southern Pacific Company and director of maintenance and operation of the Southern Pacific, Union Pacific, Oregon Railway and Navigation Company, Oregon Short Line, and am connected with a number of lines in Texas.

The CHAIRMAN. You understand the question that is pending before this committee and in your own way you can go ahead and make your statement.

Mr. KRUTTSCHNITT. As my connection with the roads is almost altogether in the line of supervising the operation and expenses, I have prepared a few statements here showing the increased expenses of the roads in the past nine or ten years, parallel with the increase in prices of commodities, comparing the increase in expenses with the increase in earnings.

A good deal of attention has been drawn to the largely increased revenues of the roads of late years, but these revenues have not increased nearly as fast as the expenses have increased. For instance, in 1897 the gross receipts of the roads of the United States were in round numbers $1,133,000,000. In 1903 they were $1,909,000,000, an increase of $776,000,000; a very large sum of money. The increase,

however, melts away very rapidly when we look at the increase in expenses. The increased price of labor at once took $292,000,000, or 39 per cent of that increase. Increase in operating expenses, purchase of material, took $234,000,000, or 30 per cent of the increase. Betterments and other deductions in the nature of operating expenses took $82,000,000, or 10 per cent. The increase in interest on funded debt took $46,000,000, or 6 per cent, leaving what you might call of divisible income only $122,000,000. Taxes took $15,000,000 and dividends $107,000,000 of the $122,000,000. Taxes took up 12½ per cent, or just one-eighth, the divisible income.

Senator NEWLANDS. What proportion went for dividends?

Mr. KRUTTSCHNITT. Thirteen per cent of the total.

I have prepared a series of diagrams here putting in condensed form a comparison of prices generally from 1894 to date, ten years.

The CHAIRMAN. They can go in as part of your statement. Can they be reproduced?

Mr. KRUTTSCHNITT. Yes.

The CHAIRMAN. Please leave a set of them with the stenographer.

Mr. KRUTTSCHNITT. I shall touch on them very briefly.

The CHAIRMAN. Just let them go in at this place.

Mr. KRUTTSCHNITT. On the first diagram, marked "A," I have shown by relative numbers, indicating percentages, the comparative prices of commodities—and commodities mean some 125 or 130—prepared by the Department of Commerce and Labor. Other curves show the variations and prices of labor and railroad transportation for the period from 1890 to 1903. Roughly, this diagram shows that labor and commodities reached their lowest values between 1896 and 1897, and in 1897 began a very rapid rise, whilst rates kept on the down grade and did not reach their lowest limit until 1899. They were lower then than they have ever been at any time. Since then they have risen slowly, but nothing like as much as commodities and labor have.

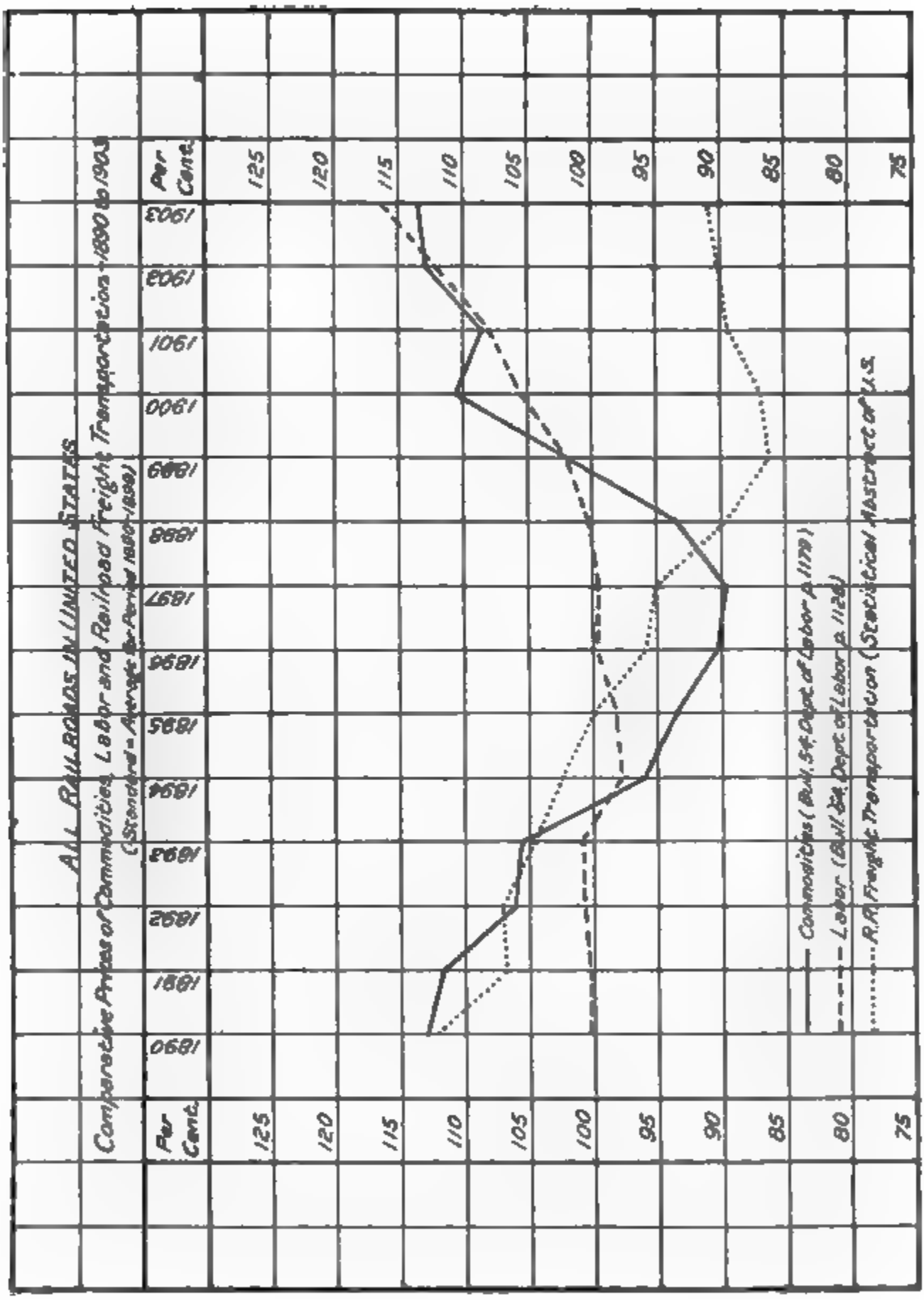
Exhibit B shows for all the railroads in the United States diagram the ton-miles of transportation purchasable with certain units of commodities for the years from 1894 to 1903. Briefly, a ton of steel rails would in 1903 purchase 33 per cent more railroad transportation measured in ton-miles than it did in 1894. A thousand feet of common pine boards would buy 50 per cent more railroad transportation, a day's pay of a locomotive engineer 43 per cent more, a ton of coal 200 per cent more.

Now, going to Exhibit C, I have shown the converse of that proposition. The railroad turns out ton-mileage. It is the commodity with which it purchases steel rails, pine boards, pays locomotive engineers and conductors. In 1903 a thousand ton-miles would buy 25 per cent less steel rails than in 1894; would buy 30 per cent less common lumber, and 70 per cent less coal; 24 per cent less labor of trainmen, 18 per cent less labor of its trackmen, 20 per cent less labor of locomotive engineers, 18 per cent less labor of conductors.

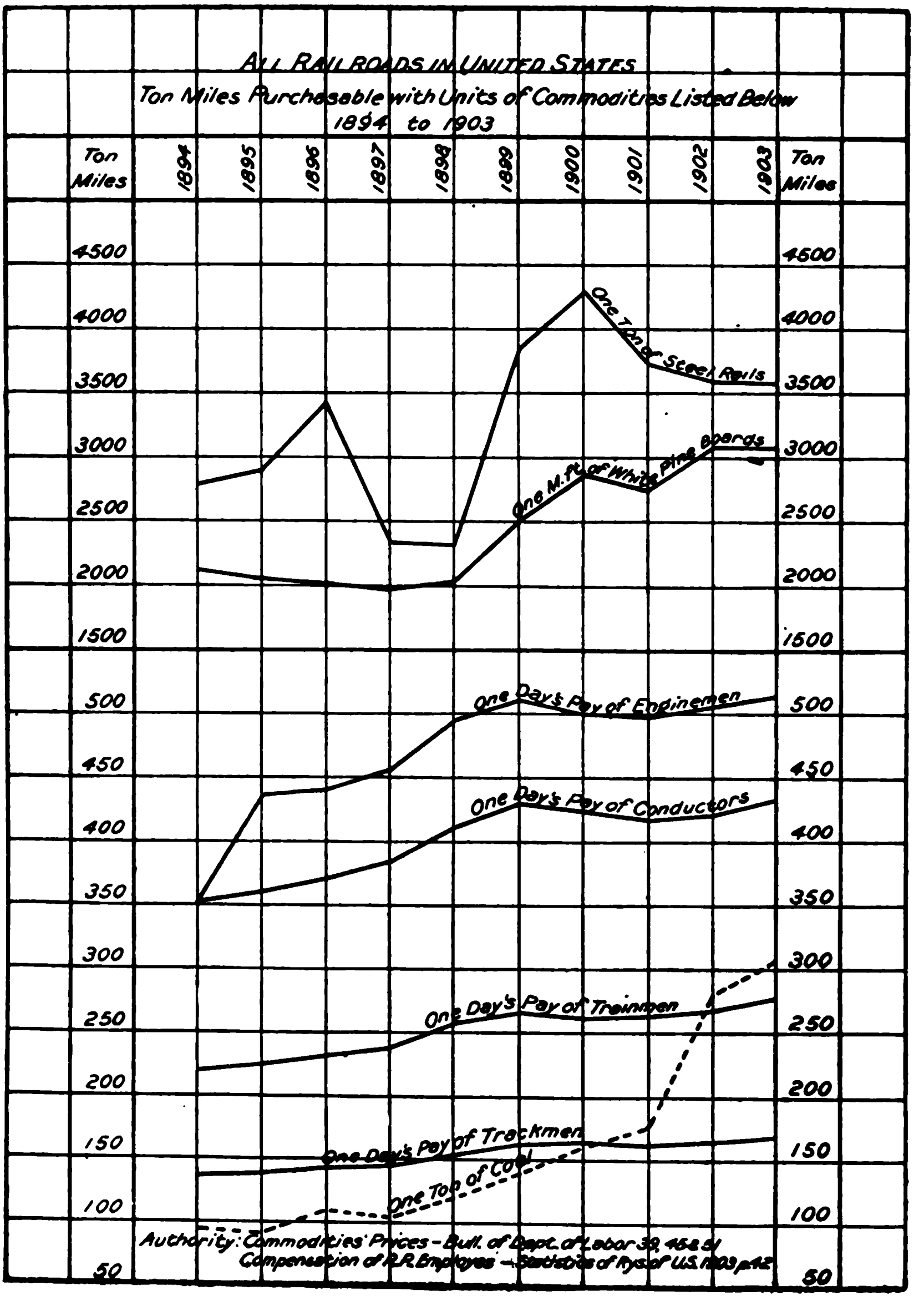
On Exhibit G, I have really condensed the other exhibits on one sheet, showing by means of four curves the relative convertibility of ton-miles into commodities and labor, and commodities and labor into ton-mileage. These curves show very graphically, and much better than can be described, the trend of values during the ten years in question.

On Exhibit H, I have shown in diagrammatic form, by heavy lines,

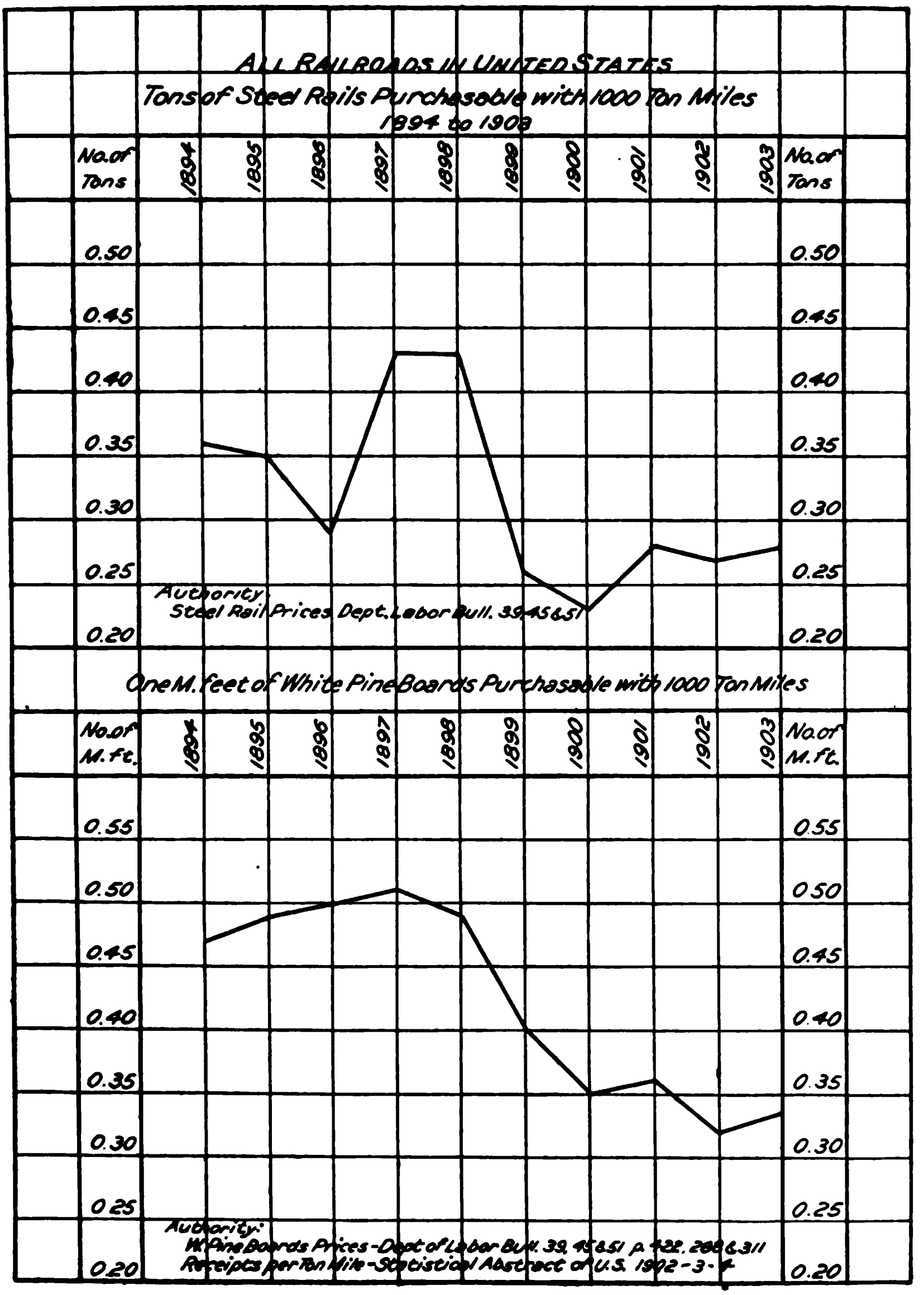
A.


ALL RAILROADS IN UNITED STATES
Comparative Prices or Commodities, Labor and Railroad Freight Transportation - 1890 to 1903
(Standard = Average for Period 1890-1899)
Per Cent.
125
120
115
110
105
100
95
90
85
80
75
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
Commodities (Bull, Sec. Dept. of Labor A 1179)
Labor (Bull. 324, Dept. of Labor p. 1128)
R.R. Freight Transportation (Statistical Abstract of U.S.

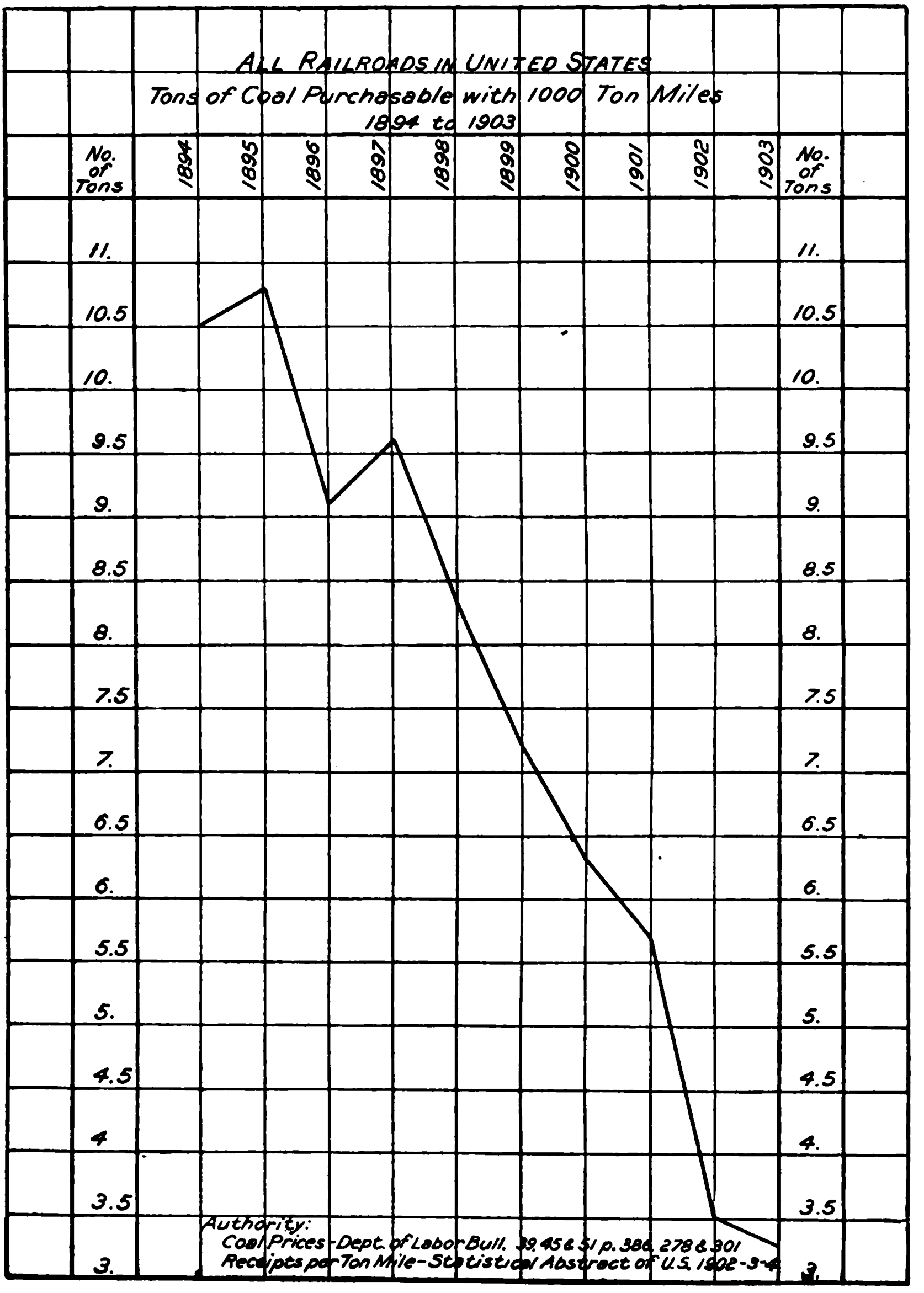
B.


All Railroads in United States
Ton Miles Purchaseable with Units of Commodities Listed Below
1894 to 1903
Ton Miles
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
4500
4000
3500
3000
2500
2000
1500
500
450
400
350
300
250
200
150
100
50
One Ton of Steel Rails
One M. Ft. of White Pine Boards
One Day's Pay of Engineers
One Day's Pay of Conductors
One Day's Pay of Trainmen
One Day's Pay of Trackmen
One Ton of Coal
Authority: Commodities' Prices - Bull. of Dept. of Labor 39, 456 & 4
Compensation of R.R. Employes - Statistics of Ry's of U.S. 1903, p. 42

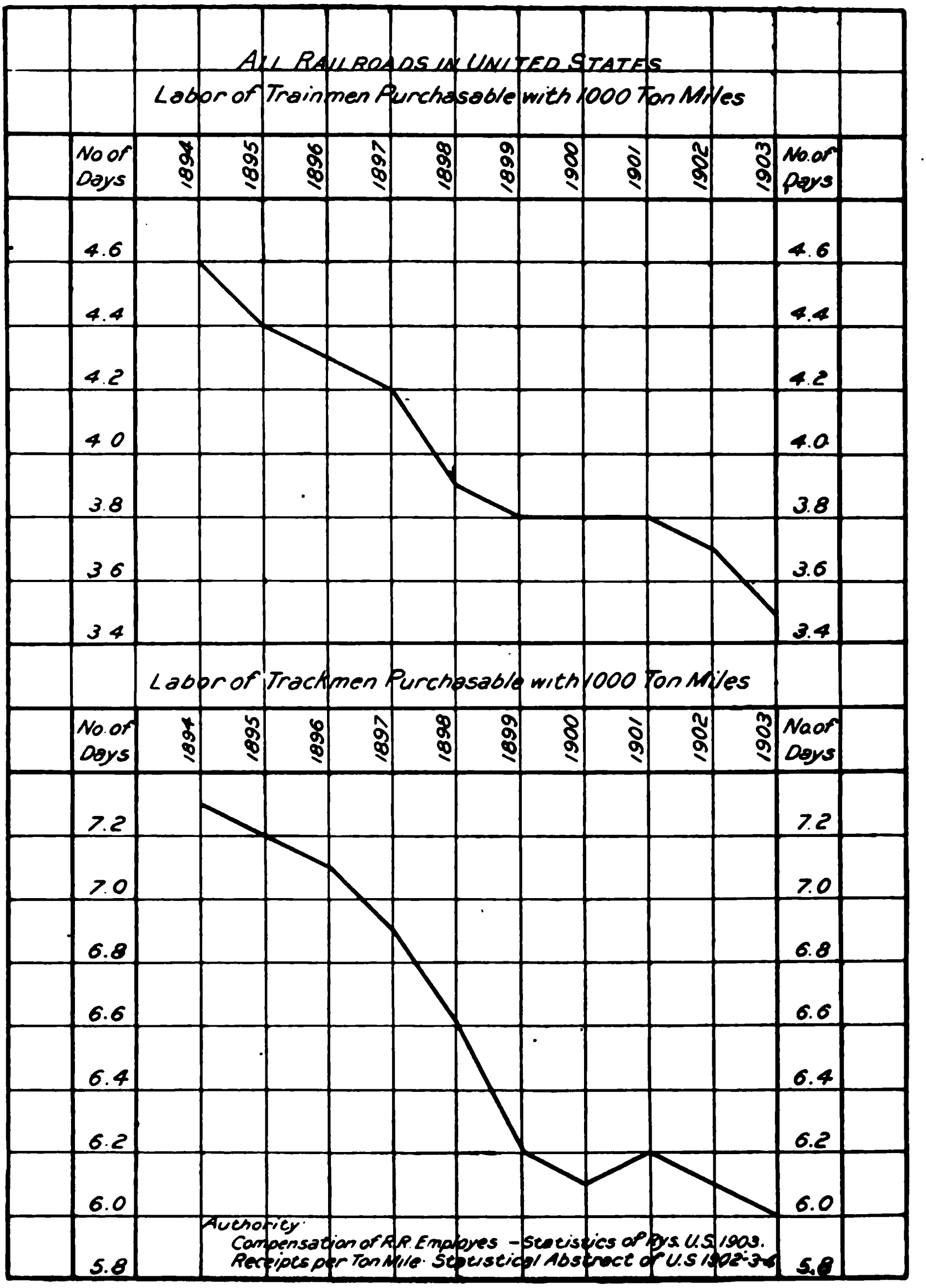
C.


ALL RAILROADS IN UNITED STATES
Tons of Steel Rails Purchasable with 1000 Ton Miles
1894 to 1903
No. of Tons
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
0.50
0.45
0.40
0.35
0.30
0.25
0.20
Authority
Steel Rail Prices Dept. Labor Bull. 39, 45 & 51
One M. Feet of White Pine Boards Purchasable with 1000 Ton Miles
No. of M. Ft.
0.55
0.50
0.45
0.40
0.35
0.30
0.25
0.20
Authority:
W. Pine Boards Prices - Dept of Labor Bull. 39, 45 & 51 p. 422, 288 & 311
Receipts per Ton Mile - Statistical Abstract of U.S. 1902-3-4

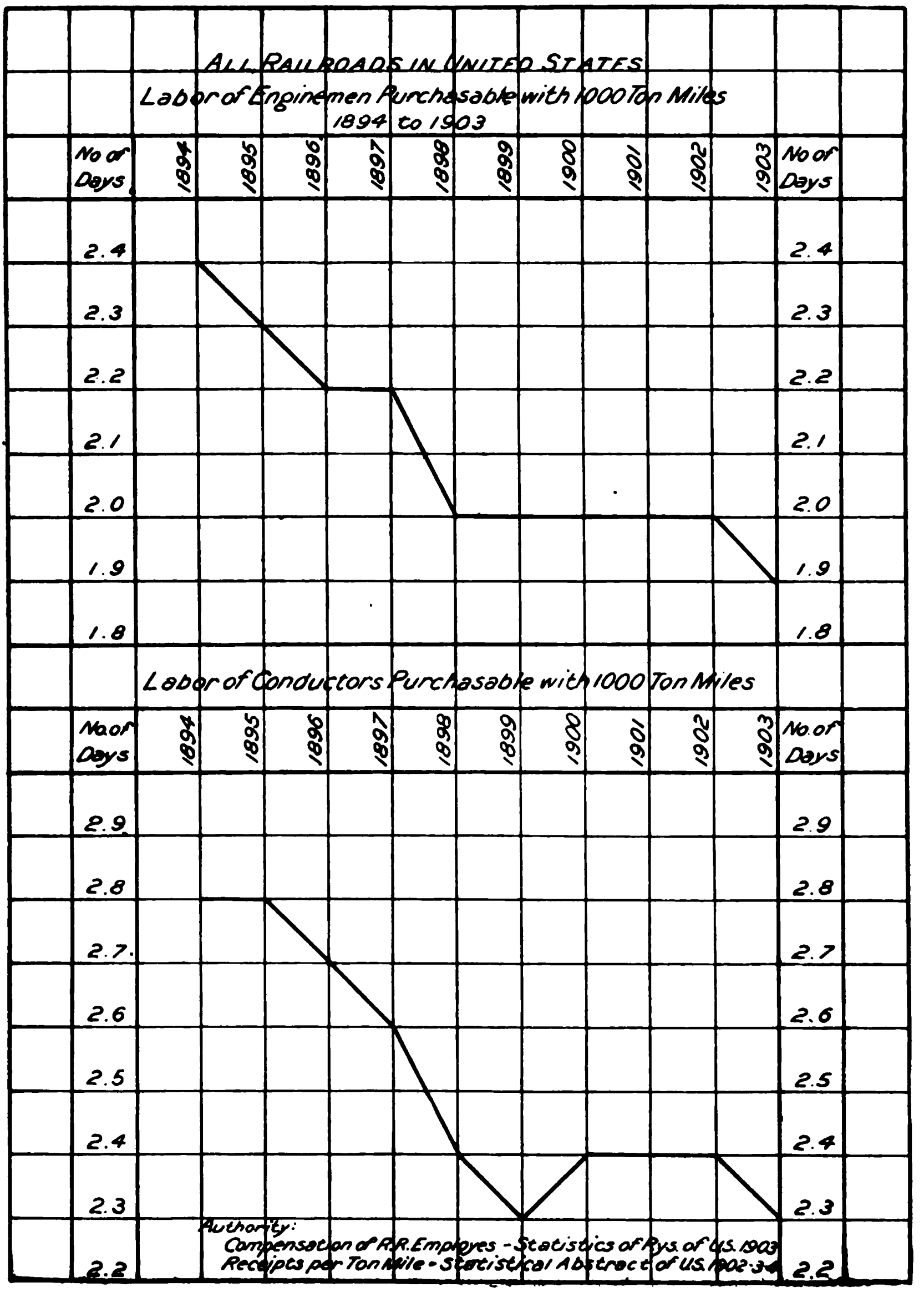
D.


All Railroads in United States
Tons of Coal Purchasable with 1000 Ton Miles
1894 to 1903
No. of Tons
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
11.
10.5
10.
9.5
9.
8.5
8.
7.5
7.
6.5
6.
5.5
5.
4.5
4
3.5
3.
Authority:
Coal Prices - Dept. of Labor Bull. 39. 45 & 51 p. 386, 278 & 301
Receipts per Ton Mile - Statistical Abstract of U.S. 1902-3-4

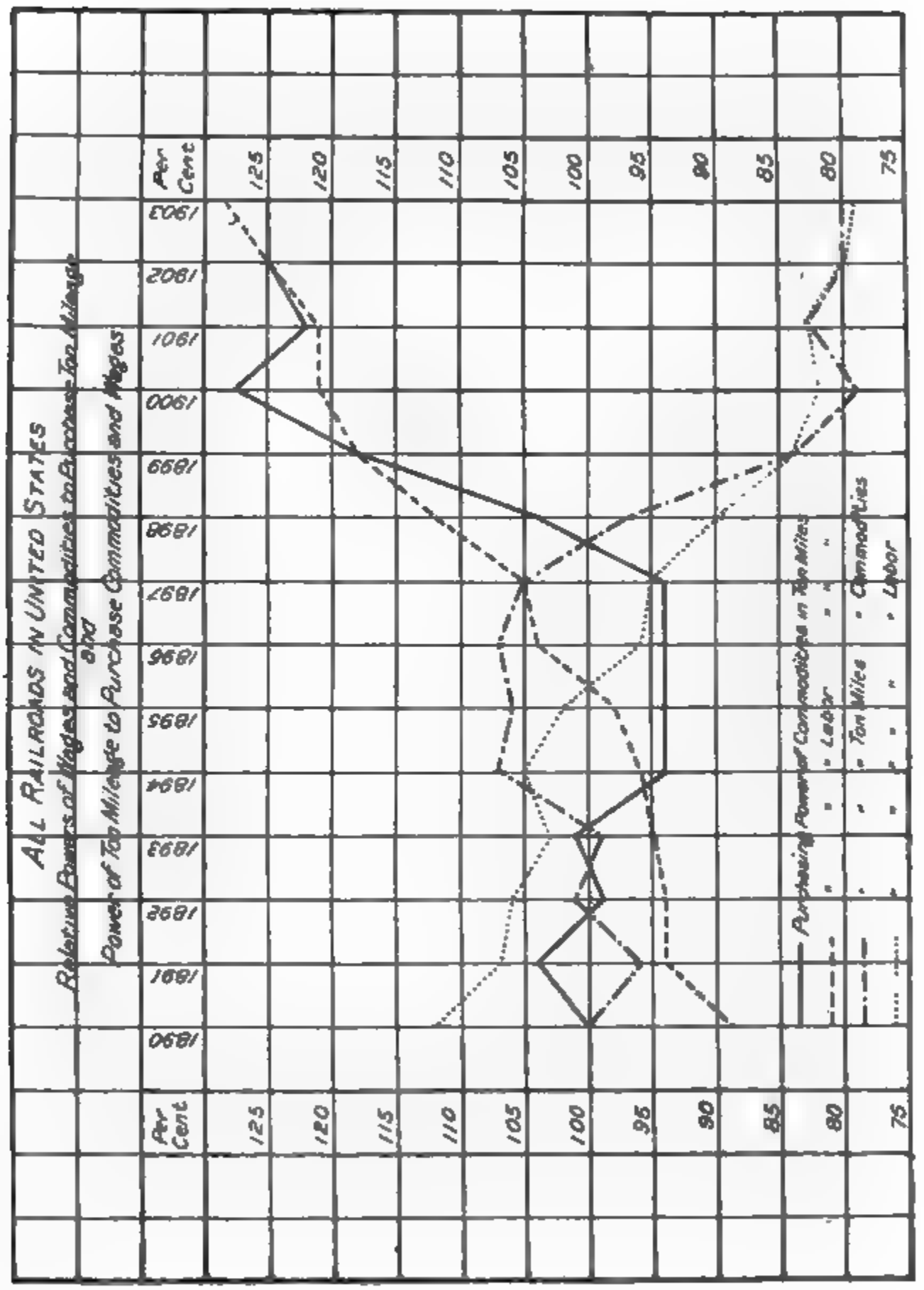
E.


All Railroads in United States
Labor of Trainmen Purchasable with 1000 Ton Miles
No of Days
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
No. of Days
4.6
4.4
4.2
4.0
3.8
3.6
3.4
Labor of Trackmen Purchasable with 1000 Ton Miles
No. of Days
7.2
7.0
6.8
6.6
6.4
6.2
6.0
5.8
Authority
Compensation of R.R. Employes – Statistics of Rys. U.S. 1903.
Receipts per Ton Mile. Statistical Abstract of U.S. 1902-3-6

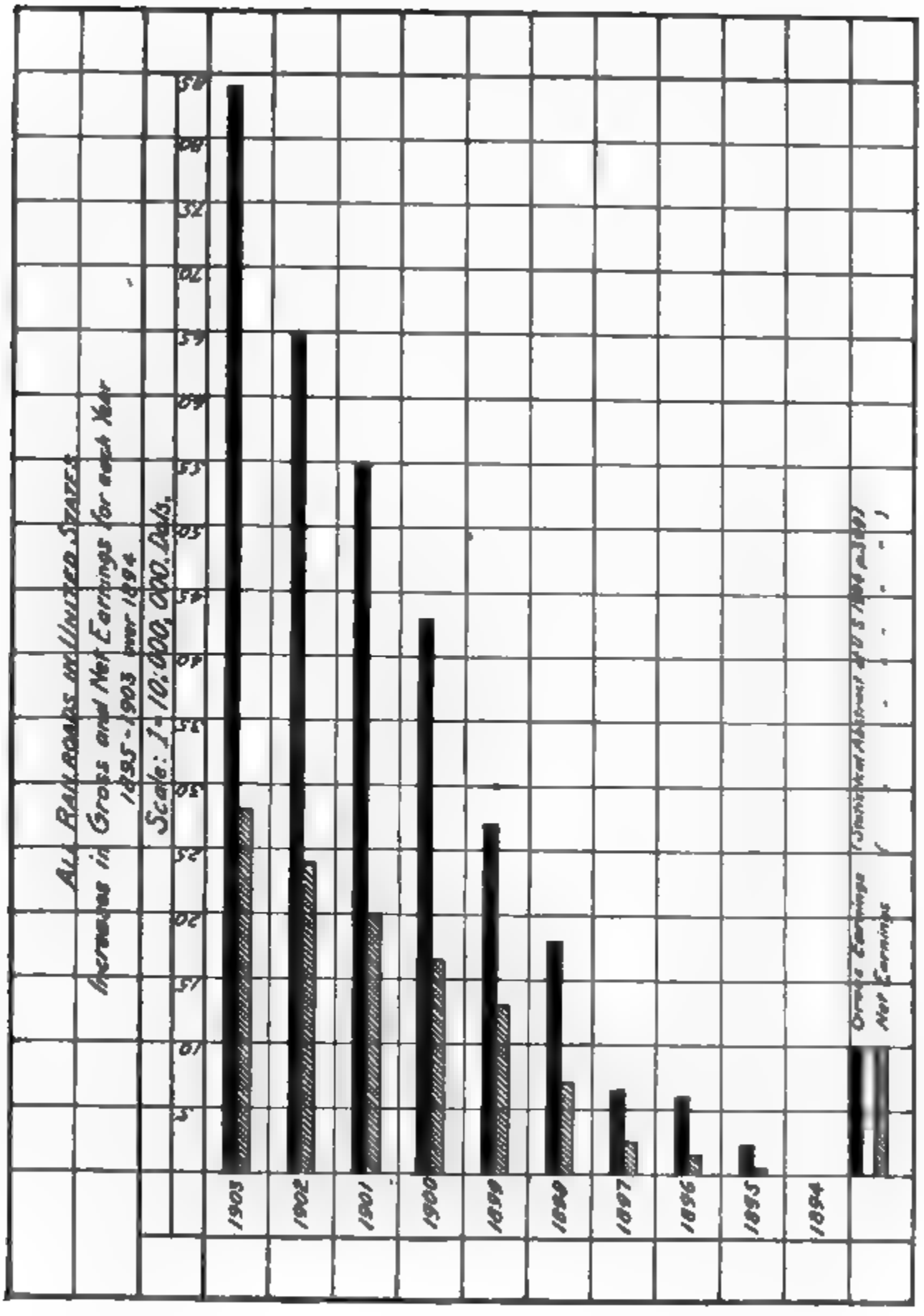
F.


ALL RAILROADS IN UNITED STATES
Labor of Enginemen Purchasable with 1000 Ton Miles
1894 to 1903
No of Days
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
No of Days
2.4
2.3
2.2
2.1
2.0
1.9
1.8
Labor of Conductors Purchasable with 1000 Ton Miles
No of Days
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
No. of Days
2.9
2.8
2.7
2.6
2.5
2.4
2.3
2.2
Authority:
Compensation of R.R. Employes - Statistics of Rys. of U.S. 1903
Receipts per Ton Mile - Statistical Abstract of U.S. 1902-3

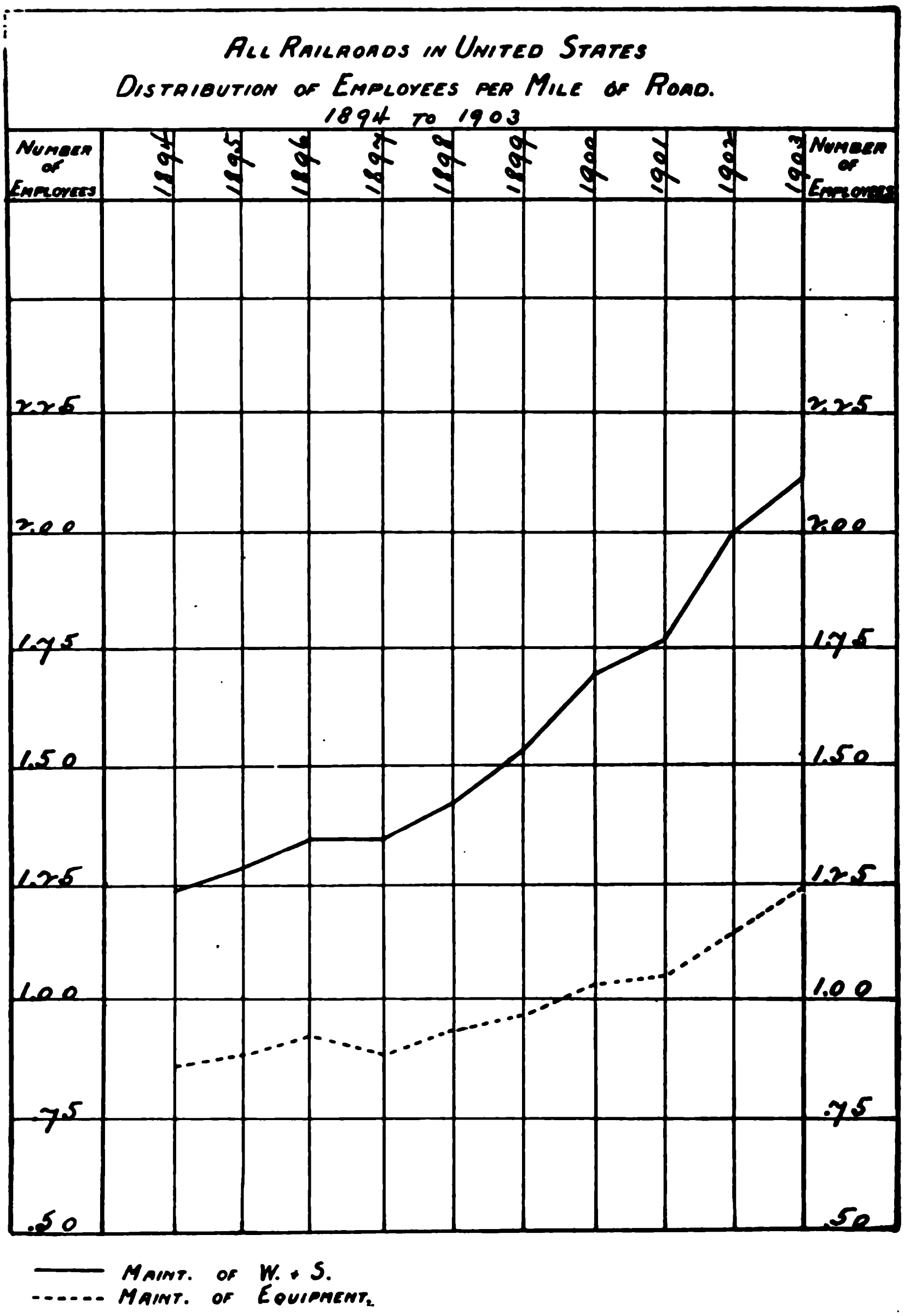
6.


All Railroads in United States
Relative Powers of Wages and Commodities to Purchase Ton Mileage
and
Power of Ton Mileage to Purchase Commodities and Wages
Per Cent
125
120
115
110
105
100
95
90
85
80
75
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
Purchasing Power of Commodities in Ton Miles
" Labor " "
Ton Miles " Commodities
" " Labor

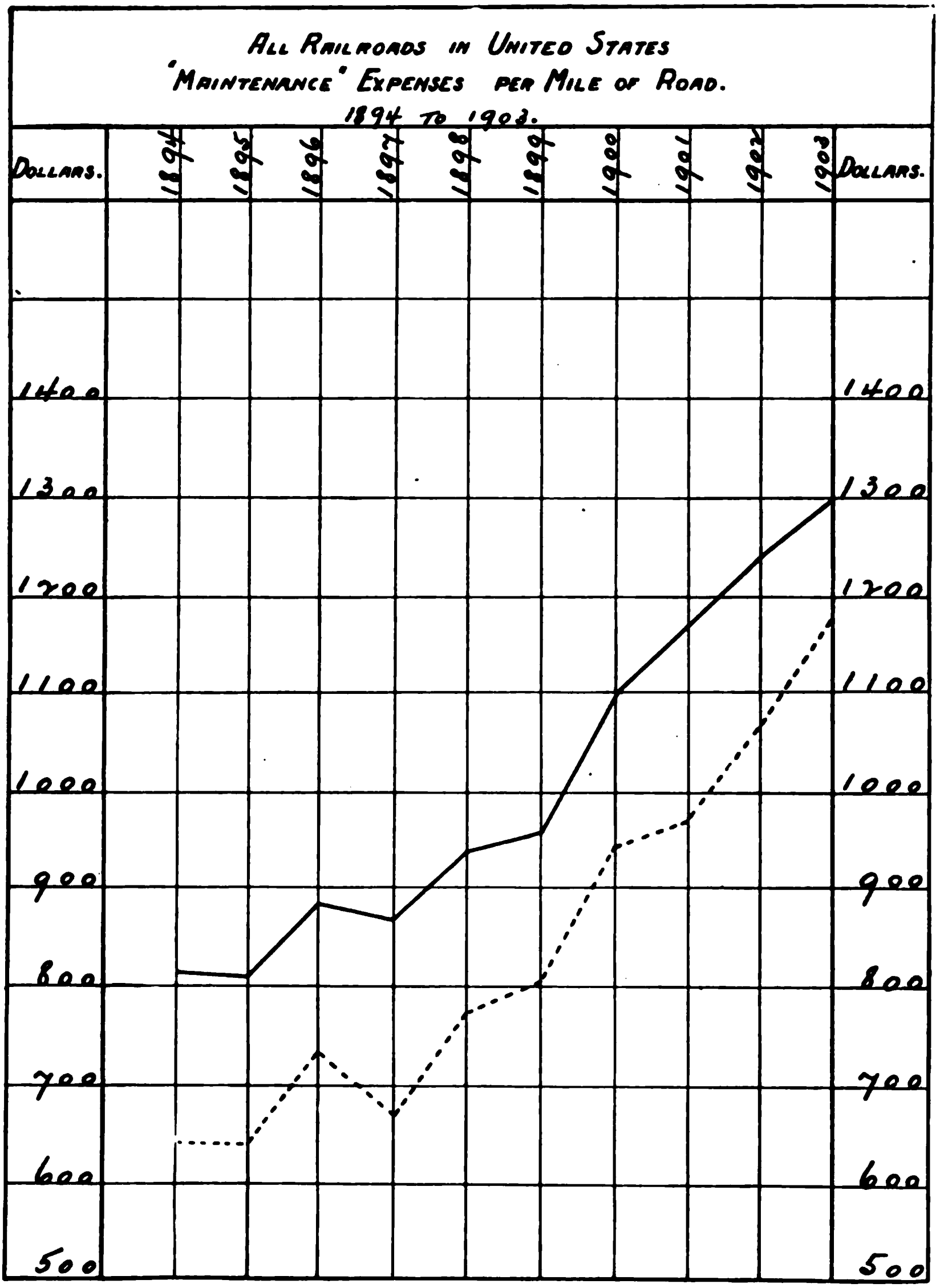
H.


All Railroads in United States
Increases in Gross and Net Earnings for each Year
1895-1903 over 1894
Scale: 1=10,000,000 Dols.
1903
1902
1901
1900
1899
1898
1897
1896
1895
1894
Gross Earnings
Net Earnings

I.


All Railroads in United States
Distribution of Employees per Mile of Road.
1894 to 1903
Number of Employees
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
Number of Employees
2.25
2.00
1.75
1.50
1.25
1.00
.75
.50
Maint. of W. & S.
Maint. of Equipment.

J.


All Railroads in United States
'Maintenance' Expenses per Mile of Road.
1894 to 1903.
Dollars.
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
Dollars.
1400
1300
1200
1100
1000
900
800
700
600
500
Maint. of Wy S.
Maint. of Equipment.

the increases in gross earnings for each year after 1894 compared with 1894, and by a shaded line the increase of net earnings. The increase in gross is extremely large, the increase in the net is comparatively small.

On Exhibit I, I show, for all railroads of the United States, the distribution of employees per mile of road, showing that the increase in weight of rolling stock and increase in speed of both passenger and freight traffic have profoundly affected operating expenses. In 1894 the roads of the United States employed on an average 1¼ track and bridge men per mile of road to keep it up. In 1903 they employed 2¼ men—an enormous increase. In shop force in 1894 they employed about three-fourths of a man to a mile of road, in 1903 1¼ men.

On Exhibit J, I have shown practically the same information as on Exhibit I, but in dollars. In 1894 the roads of the United States spent on an average $800 in maintenance of way and structures—that is to say, bridges, buildings, and everything to carry the trains—per mile of road; in 1903, $1,300 per mile; an increase of $500 per mile, or considerably over 50 per cent.

Senator NEWLANDS. That is simply for maintenance?

Mr. KRUTTSCHNITT. Simply for keeping their roadbeds up, due to two causes. In that appears the enhanced value of steel rails, crossties, lumber, bridges, and all of the materials going to keep up the roadbed, and the increased price of labor. To keep up their equipment they spent in 1894 $650 per mile of track; in 1903 practically $1,200 per mile of track—nearly double.

A statement was prepared at the request of the Senate, marked "Document No. 257, 58th Congress," being a response of the auditor of the Interstate Commerce Commission to a request of the Senate to show to what extent the railroad revenues have increased through increases or raises in rates. I only saw this document to-day after leaving the committee room, but I have discovered a very serious error in it, one which has no doubt misled not only this committee, but everyone who has read it. That error is in the paper on page 8, which is really the answer to the question. The auditor of the Commission gives the increase in revenue to the railroads in 1903 over 1899 through increase of rates as $155,475,000. That sum is in error to the extent of $71,000,000. The error is proven by figures taken from the Interstate Commerce Commission's report for 1903, and I would ask permission to file this statement, marked N, with the stenographer. I have headed this exactly the same as the statement in Senate Document 257, and prove clearly the incorrectness of the figures. I have called particular attention to that point, because I have heard it stated in the committee room since I have been in Washington, and I have also seen it in the public press attributed to witnesses before this committee, that the roads have increased their revenues enormously through increases of rates. This error reduces that increase by very nearly 50 per cent.

Senator NEWLANDS. That increase is shown in the report of the Interstate Commerce Commission, is it not, for 1903?

Mr. KRUTTSCHNITT. No, sir; this increase is the specific answer to the Senate's question.

Senator NEWLANDS. But is there not a similar increase in revenue shown by the Intersate Commerce Commission's report?

Mr. KRUTTSCHNITT. The strange thing is the increase in revenue shown in the Interstate Commerce Commission's report——

The CHAIRMAN. Will you show wherein this is a mistake?

Mr. KRUTTSCHNITT. Certainly.

Senator CLAPP. What do you make the difference?

Mr. KRUTTSCHNITT. $71,571,000.

The CHAIRMAN. Perhaps this would be the best place to explain how that error was made.

Mr. KRUTTSCHNITT. I will read it.

The CHAIRMAN. Is that in the paper which you have handed to the stenographer?

Mr. KRUTTSCHNITT. Yes; but I can read it out. Referring to page 8 of Senate Document 257, the number of tons of freight carried should be 1,304,000,000 tons instead of 1,221,000,000 tons. The toal freight revenue as charged should read $1,338,000,000 instead of $1,318,000,000. Those are errors in figures that are no doubt due to the fact that the figures in the Senate Doucment were prepared before the report was prepared, and the report gave different figures; but the principal difference is due to this fact: That they applied the rates which the railroads received per ton regardless of the distance the freight was carried. Now, in all of the computations of the Commission they have made rate comparisons on ton mileage. In answering this question they went to tons carried. The tons were carried different distances in the two years. Hence they were not comparable. They were entirely different units. And instead of multiplying the tonnage carried by the rate per ton in this new computation, I have taken their ton mileage and multiplied it by the rate per ton mile, and that gives the difference.

N.

Statement showing total ton-milcage of freight carried by the railroads of the United States for the fiscal years ending June 30, 1899, 1900, 1901, 1902, and 1903, with the total revenue accruing therefrom; also the revenue which would have accrued at the average rate of 7.24 mills per ton-mile for the years ending June 30, 1900, 1901, 1902, and 1903, this being the average rate for the year ending June 30, 1889; and the increase in the revenue for the years 1900, 1901, 1902, and 1903 resulting from the increase in the average rate per ton-mile for those years.

Year ending June 30—	Ton-miles (1=1,000,000).	Total freight revenue as charged (1=1,000).	Average rate per ton-mile, in mills.	Amount freight revenue at rate of 7.24 mills, being rate for 1899 (1=1,000,000).	Increase.
1899	123,667	$913,757	7.24	$913,757	.....
1900	141,599	1,049,256	7.29	1,025,177	$24,080,000
1901	147,077	1,118,543	7.50	1,064,837	53,706,000
1902	157,289	1,207,228	7.57	1,138,772	68,456,000
1903	173,221	1,338,020	7.63	1,254,120	83,900,000

UNION PACIFIC SYSTEM,
SOUTHERN PACIFIC COMPANY,
Washington, D. C., May 20, 1905.

Hon. S. B. ELKINS,
Chairman Committee on Interstate Commerce,
U. S. Senate, Washington, D. C.

DEAR SIR: Exhibit N, filed with my testimony before the Senate Committee on Interstate Commerce, was based on figures taken from

the annual reports of the Interstate Commerce Commission. "Ton miles," appearing on column 2, were taken from the Statistics of the Railways of the United States for 1903, of the Interstate Commerce Commission, page 67. The last two items of the "Total freight revenue as charged," column 3, were taken from page 80 of 1903 statistics, and the first three from Senate Document No. 257, page 8. The "Average rate per ton mile, in mills," was taken from page 95 of the statistics of 1903.

The amounts in column 5, of Exhibit N, were obtained by multiplying the figures in column 2 by 7.24, the 1899 rate; and the increases in column 6 are the differences between the amounts given in column 3 and those in column 5.

In discussing the surprising results revealed by these multiplications with other witnesses, I found that the conclusions reached by them did not check with mine, and after leaving the committee room investigation showed the average rates per ton mile given in column 4, copied from the Commission's statistics for 1903, are not derived from divisions of the figures showing total freight revenue in column 3 by the ton mileage given in column 2, as they should be.

I made the divisions, and give below, in parallel columns, the average rates per ton mile taken from the Commission's statistics and those actually obtained by division, and have recast the Exhibit N as follows:

Statement showing the total ton mileage of freight carried by the railroads of the United States for the fiscal years ending June 30, 1899, 1900, 1901, 1902, and 1903, with the total revenue accruing therefrom; also the revenue which would have accrued at the average rate of 7.4 mills per ton mile for the years ending June 30, 1900, 1901, 1902, and 1903, this being the CORRECTED average rate for the year ending June 30, 1899; and the increase in the revenue for the years 1900, 1901, 1902, and 1903, resulting from the increase in the average rate per ton mile for those years.

Year ending June 30.	Ton-miles. 1=1,000,000. (Stat., 1903, p. 67.)	Total freight revenue as charged. 1=1,000.	Average rate per ton-mile, in mills (Stat., 1903, p. 95.)	Average rate per ton-mile in mills, obtained by division of figures in column 3 by those of column 2.	Amount freight revenue at rate of 7.4 mills, being rate for 1899. 1=1,000,000.	Increase.
1899	123,667	[a] $913,757	7.24	7.40	$913,757	.....
1900	141,599	[a] 1,049,256	7.39	7.41	1,047,883	$1,498,000
1901	147,077	[a] 1,118,543	7.50	7.60	1,088,369	30,174,000
1902	157,289	[b] 1,207,228	7.57	7.70	1,169,939	43,290,000
1903	173,221	[b] 1,338,080	7.68	7.73	1,281,635	56,185,000

[a] Senate Document No. 257, p. 8. [b] I. C. C. Statistics, 1903, p. 80.

If the ton mileage of each year be multiplied by the average rate that prevailed in 1899, and if such results be compared with the total freight revenue as charged, the differences will give the most accurate idea of the increased revenue resulting from advances in freight rates or changes in classification that can possibly be obtained. In other words, the increases thus shown will accurately answer the first question contained in the resolution of the Senate of the United States, adopted March 11, 1904, which reads:

Resolved, That the Interstate Commerce Commission is hereby directed to furnish the Senate, as speedily as may be practicable, a report showing the

principal changes in railway tariff rates, whether resulting from the adoption of new rates or the amendment of freight classifications, and an estimate of the effect of such changes upon the gross and net revenues of railway corporations in the United States during each of the fiscal years ending June thirtieth, nineteen hundred, nineteen hundred and one, nineteen hundred and two, and nineteen hundred and three, as compared with the gross and net revenue that would have been derived by them under the rates and freight classifications in force during the fiscal year ending June thirtieth, eighteen hundred and ninety-nine.

The table given above shows that the increase in freight revenue of the railroads in 1903, due to all of the increases in rate and changes in classification that occurred between June 30, 1903, and June 30, 1899, a period of four years, amounted to $56,185,000 instead of $155,475,502 as shown in the answer of the Commission to the resolution of the Senate in question, and that the total increases of income due to rate increases for the entire period of four years, 1900–1903, inclusive, amounted to $131,000,000 and not $302,000,000 as claimed by the Commission, their overestimate of the increase in 1903 being about $100,000,000, and for the whole period $171,000,000.

I respectfully beg that this letter be incorporated as a supplement to Exhibit N in my testimony, showing as it does that the estimate of the Interstate Commerce Commission in Senate Document 257 makes the benefits to the railroads from increases of rate very much greater than they should be.

Yours, truly, J. KRUTTSCHNITT.

Mr. KRUTTSCHNITT (continuing). There are some other matters that were called to my attention in the testimony given, particularly about Southern Pacific lines, by Mr. Call, before this committee, which I would like very briefly to refer to.

First, the refrigerator-car contracts. The Southern Pacific Company has been held up in the press to the execration of the public because it has made a contract with the Armour Car Line for refrigerating cars. I think it proper for the information of the committee—unless Mr. Robbins has explained the contract—to explain this. Did he explain it?

The CHAIRMAN. I do not know; perhaps you had better do so anyway.

Mr. KRUTTSCHNITT. The contract is one that the Interstate Commerce Commission is familiar with. We give the details of it in our report to them.

In handling the green fruit and the citrus fruit of California, which is shipped in two or three months, we must have from four to five thousand refrigerator cars for the purpose. Those cars cost roughly from $1,000 to $1,200 a piece. From four to five thousand cars represent, then, from $5,000,000 to $6,000,000 capital. The Southern Pacific Company has no use whatever for refrigerator cars outside of the two or three months when the citrus and deciduous crops are moving. The Armour people own from 10,000 to 12,000 of those cars. They have use for them the year round, because when they are not moving fruit they are moving butter or beef or beer or other perishable products. We have simply made a contract with them, agreeing to pay them the mileage rates we pay connecting lines for the use of their equipment whenever we use their cars, which is

6 mills per mile run; we pay that to all of our connections. If we use a Burlington car we pay them a per diem, a certain sum per day.

The only difference between the payment of the connecting line car and the refrigerating car is in the one case we pay it per mile run and in the other case we pay a per diem. In the case of the connection we pay a daily rental as an incentive to get the car home. That incentive is not necessary with the refrigerating car, because we are always in a hurry to move that, and hence we pay by the mile run, and it is the rate that was universally paid amongst the carriers themselves prior to the establishment of a per diem rate, which was established merely as a spur to make the borrowing road hurry up and get its neighbors' cars home.

The CHAIRMAN. That is how much—20 cents a day?

Mr. KRUTTSCHNITT. Twenty cents a day.

Senator NEWLANDS. And how much is this charged in mills?

Mr. KRUTTSCHNITT. Six mills per mile run.

Senator NEWLANDS. And have you computed that as to how it compares with the other charge?

Mr. KRUTTSCHNITT. The two were interchangeable; but a refrigerator car makes somewhat more mileage, but it costs very nearly twice as much.

That is this contract for which we have been so much abused, and which it has been intimated was entirely crooked and wrong. When we are through with the cars we do not use them and do not pay for them any more, and they take them to another part of the country where they can use them.

Senator NEWLANDS. There is no question of icing in this?

Mr. KRUTTSCHNITT. No; we have nothing to do with the icing.

Senator NEWLANDS. But those cars use ice?

Mr. KRUTTSCHNITT. Yes; but we have nothing to do with that.

Senator NEWLANDS. Do they use ice for the citrus fruits?

Mr. KRUTTSCHNITT. Occasionally; ordinarily those cars are used for citrus fruits in winter to prevent freezing.

Senator NEWLANDS. Yes; I suppose so.

Mr. KRUTTSCHNITT. But there was one year when the Southern Pacific shipped oranges from California all the year; in other words, shippers kept them in cold storage and shipped them through the summer; and in such a case, of course, ice was required.

Senator NEWLANDS. But you have nothing to do with the icing.

Mr. KRUTTSCHNITT. No; nothing to do with that. The car line own their own ice houses and make their contracts.

Senator KEAN. Do they have published rates? Do they publish rates with your rates?

Mr. KRUTTSCHNITT. Whether they are published with our rates I do not know, but they are public.

This contention of the orange growers with the Southern Pacific and the Santa Fe interests, to which Mr. Call devoted so much attention, and in which Southern Pacific interests were misrepresented, was probably the longest contention we have ever had with shippers.

It has been stated here by a number of shippers that they had no difficulty in agreeing with the carriers on rates. I can confirm that in an experience running back some twenty-seven years over the

lines of the Southern Pacific System. We have never had any serious trouble with shippers. Whenever there has been a contention about rates it has usually been settled amicably. This orange contention, however, which is being bitterly contested, is not legitimately a question which the carrier can settle. Underneath it all is a loss to the orchardist through overproduction. His profits have fallen, and in casting around for some way to recover himself he sees the railroad and he attacks the railroad. The rates, considering the service rendered, are extremely reasonable. I will not go into all of the details as to why it is reasonable, but I will ask leave to leave with you Exhibit K, which is a copy of a statement that I filed at the time with the Commission explaining the railroad side of the rate contention. I have a copy which I will leave with the stenographer.

EXHIBIT K.—*Statement furnished by J. Kruttschnitt, vice-president Southern Pacific Company.*

GENERAL COST OF OPERATING LOS ANGELES-EL PASO AND LOS ANGELES-OGDEN LINES.

The line from Los Angeles to El Paso, 813 miles, is made up of the main line of the Los Angeles division—Los Angeles to Yuma—250 miles, and the main line of the Tucson division—Yuma to El Paso—563 miles. The average cost of running a freight train 1 mile on the main line of the Los Angeles division for the first three months of the calendar year 1903 was $2.23, excluding taxes, betterments, and fixed charges. Therefore the total cost of running it 250 miles, from Los Angeles to Yuma, would be $557.50. The cost of running a freight train 1 mile, for the same period, on the Tucson division, was $1.60; and the total cost of running it 563 miles, from Yuma to El Paso, is, therefore, $900.80, or a grand total cost of $1,458.30 between Los Angeles and El Paso, a distance of 813 miles, or an average of $1.79 for 1 mile.

The number of gross tons, or the weight of the revenue-paying freight and the weight of the cars necessary for its transportation, averaged 891 tons to each train, of which 400 tons were revenue-paying freight and 491 tons the weight of cars to carry it. The dead weight of car hauled to enable the company to earn the freight was 1.23 tons for every ton of revenue-yielding contents.

By dividing the cost per train mile by the gross tons per train we find the average cost of hauling 1 gross ton 1 mile to be 2.01 mills. The cost of hauling one ton of paying freight, with its pro rata of 1.23 tons of the dead weight of car was, therefore, $2.23 \times 2.01 = 4.48$ (mills).

As the average earnings per ton mile on all commercial traffic were 9.6 mills, we see that 47 per cent of the earnings were absorbed by expenses.

The line from Los Angeles to Ogden is made up of 276 miles of the San Joaquin division, on which the average cost of running a freight train 1 mile was $1.58, or a total for the 276 miles of $436.08; and 169 miles of the Western division, costing an average of $2 per train mile, or a total of $338; and 188 miles of the Sacramento division, at an average cost per train mile of $1.98, or a total cost of $372.24; and 563 miles of the Salt Lake division, costing $1.53 per freight-train

mile, or a total cost of $861.39. This makes a grand total cost of $2,007.71 for running a freight train the 1,196 miles separating Ogden from Los Angeles, or an average of $1.68 per train mile.

The average number of gross tons of dead and revenue-producing freight per train was 788, of which 369 tons were revenue producing. That is to say, for each ton of freight yielding revenue there were hauled 1.14 tons of dead weight of car. The average cost of moving a gross ton 1 mile, obtained by dividing $1.68, the cost of moving a train 1 mile, by the number of gross tons in a train, or 788, is, therefore, 2.13 mills. As it is necessary to haul 1.14 tons of dead weight for each ton that pays its way, the cost per ton mile of freight is $2.14 \times 2.13 = 4.55$ (mills).

The earnings from all traffic on the line being 9.96 mills per ton mile, 45 per cent of the earnings are seen to be absorbed in the expenses of carrying the freight.

ACTUAL COST OF TRANSPORTING A TRAIN OF ORANGES FROM LOS ANGELES TO EL PASO AND FROM LOS ANGELES TO OGDEN.

The answer to this question is of the same general nature as those given above for general traffic, but the amounts are profoundly affected by the discriminating conditions under which the citrus-fruit traffic is handled. The principal causes increasing the cost of handling citrus fruit are as follows:

1. All of this traffic is handled in refrigerator cars, which not only cost 43 per cent more to build than the ordinary box car of much greater freight-carrying capacity, but which weigh 35,000 pounds, which is 2 tons or 13 per cent more than the ordinary box car.

2. The ordinary freight car is loaded and earning revenue 72 per cent of the total number of miles run by it in the course of the year. The refrigerator car is loaded in one direction and is hauled 86 per cent of the miles in the reverse direction empty. It is loaded and earning revenue, therefore, for only 57 per cent of the miles run by it in traffic.

3. Although the company may have ample equipment of its own, at a given time and place, to move citrus fruit, it is compelled to keep special equipment in large quantities on hand in order to accommodate it. The total rental payments on this account, per car loaded with citrus fruit, run 1 mile, amount to one-half mill per ton mile of loading.

4. This special equipment must be stored at convenient points from which the cars are distributed by switching or local freight-train service to loading platforms. The cars after their long trips have to be assorted and switched to sidetracks to be repaired and fumigated, and after loading they have to be switched to icing tracks for refrigeration. The average cost of the extra service performed on this class of equipment, and not incidental to ordinary traffic, amounts to about $7 per car on all the cars of oranges moved in the season, or about 0.7 mill per ton mile, based on the orange haul on the Southern Pacific Company's lines.

5. One-half of the total number of refrigerator cars loaded with citrus fruit are sent out under refrigeration, the average number of

tons of dead weight of ice on which the company earns no revenue being 5.

To determine the additional cost of hauling a train of citrus fruit, the most important consideration is the ratio of dead, or nonrevenue-producing load, to live or revenue-producing load. The actual cost to the company, leaving out the element of risk, is exactly the same to move at a given speed a given tonnage of coal or silks and laces or citrus fruit or lumber or any other commodity. It matters little to the locomotive hauling the train whether 5 or 75 per cent of the load coupled to it is revenue-producing tonnage or not. The expenditure of energy and of labor in moving the train is the same. It therefore follows that as the railroad company expends a larger amount of energy, equivalent to money, in moving a ton of freight that requires an incidental service of moving 4 or 5 tons of dead weight or package the cost of moving the necessary package must be borne by the ton of freight it contains.

In our answer to the first question we showed that with average traffic the railroad company has to haul very little over 1 ton of dead weight for each ton of paying freight. With citrus fruit the empty refrigerator car weighs 17.5 tons. The weight of the ice divided by 2, as only every other car is iced, or 2.5 tons, being added, the total weight of the refrigerator car and ice is 20 tons. The paying load per car is 13 tons. The average number of orange cars in a train running from Los Angeles to El Paso being 27, and from Los Angeles to Ogden 24, the net results to the company will therefore be as follows:

Los Angeles to El Paso.—The cost of an average train mile, as shown above, is $1.79. The cost per gross ton-mile of car and contents is 2.01 mills. The paying load in an orange train, at 13 tons per car, is 351 tons. Each car that carries oranges from Los Angeles to El Paso is hauled over the line from El Paso to Los Angeles 86 per cent of the distance empty. The gross tons involved in this movement from El Paso to Los Angeles are 406; the gross weight of cars in a train of oranges hauled from Los Angeles to El Paso is 540 tons; and the tons of loading, 351, making a grand total of 1,297 gross tons for each train load of paying freight. Divide this by 351, the paying load, and we find that for every ton of revenue-producing freight hauled we are compelled to haul 2.7 tons of dead weight, or the total number of tons hauled for each ton of revenue-producing freight is 3.7. In other words, the company collects revenue on 1 ton-mile of service and renders 3.7 ton-miles. The cost per ton-mile of revenue-paying freight will, therefore, be $3.7 \times 2.01 = 7.4$ (mills). To this should be added the additional cost of rental of special cars, 0.5 mill; the cost of switching service, refrigeration, switching to special repair tracks, cost of furnishing special facilities in terminal yards, etc., aggregating 0.7 mill, making a grand total cost per ton-mile of 8.6 mills.

The total cost of hauling such a train from Los Angeles to El Paso would be $2,455. The revenue from the carriage of citrus fruit in such a train amounts to $3,484, from which it will be seen that 71 per cent of the revenue is taken up in expenses, without taking into consideration the extra expense of the preferred movement given this traffic, the cost of delay imposed on other traffic by the discrimina-

tion, the additional wear and tear and fuel by moving these trains at greater rate of speed.

Los Angeles to Ogden.—The cost of an average train on the line from Los Angeles to Ogden, as shown above, is $1.68, and the cost per gross ton-mile of car and contents is 2.13 mills. The paying load in an orange train, at 13 tons per car, amounts to 311 tons. Each car that carries oranges from Los Angeles to Ogden is passed over the line from Ogden to Los Angeles, 86 per cent of the distance, empty. The gross tons involved in this movement per train load are 361. The weight of cars involved in the haul of a train load of empty refrigerator cars, Los Angeles to Ogden, is 477. The weight of contents is 311 tons, or a total of 1,149 tons per train load of citrus fruit east bound over the Los Angeles-Ogden route. Dividing this by 311, the weight of the paying load in such a train, we find that for every ton of revenue-producing freight hauled we are compelled to haul 2.7 tons of dead weight, or the total number of tons hauled for each ton of revenue-paying freight is 3.7. The cost per ton-mile of revenue-paying freight will, therefore, be 3.7×2.13=7.9 (mills).

To this should be added the cost of rental of special cars for this service, extra switching and refrigerating, switching to special repair tracks, cost of furnishing special facilities in terminals, yards, etc., amounting to 1.2 mills per ton-mile, or a total of 9.1 mills per ton-mile.

The total cost of hauling such a train from Los Angeles to Ogden is $3,385; the revenue derived from its carriage amounts to $3,086; from which it will be seen that on the Los Angeles-Ogden line, on account of the greater length of haul, as compared with the Los Angeles-El Paso route, the expenses amount to 110 per cent of the earnings, without taking into account the extra expenses for the preferred movement, cost of delay imposed on other traffic by this discrimination, additional wear and tear and fuel through moving these trains at a greater rate of speed, etc.

The expenses referred to above are operating expenses only, and include nothing for taxes, betterments, and fixed charges. The revenue per ton on which the above is based is the Southern Pacific proportion of the average freight charged on oranges shipped from Los Angeles to Chicago, Cincinnati, Pittsburg, and New York. The through rate to all these points is $1.25 per hundred pounds, and our proportion of this through rate differs according to destination. For example, on oranges shipped from Los Angeles via El Paso we receive 42.5 cents on shipments to New York and 56.4 cents on shipments to Chicago, the average rates received by us to the four points mentioned being 49.7 cents per hundred pounds. Similarly, on oranges shipped from Los Angeles via Ogden the Southern Pacific average earnings are 49.4 cents per hundred pounds.

RELATIVE TO THE COST OF OPERATING FOR THE YEARS 1903 AND 1902.

The average cost of running a train 1 mile for the first eight months of the fiscal year 1902–3 was $1.79 on the Southern Pacific lines west of El Paso, and for the same period of the fiscal year 1901–2 it was $1.72. Every item of operating expense shows an increase except

one, that of fuel for locomotives, which has decreased through the substitution of oil for coal.

The cost per train-mile for each item of service is shown below:

	1902-3.	1901-2.
	Cents.	Cents.
Station service	22.33	20.27
Train service	13.64	11.15
Fuel for locomotives	33.96	34.25
Other locomotive service	19.39	18.06
Contingencies	13.44	12.35
Maintenance of equipment	39.25	33.65
Maintenance of way and structures	39.84	36.36
General expenses	[illegible]	5.61
Total	176.64	171.69

Some of the particular items of increased prices that have affected the expenses of railroad operation, as compared with the last year, are the following:

Redwood cross-ties, at Oakland, in 1902, cost 40 cents each; in 1903, 50 cents each, or an increase of 25 per cent.

Sawed pine ties last year cost 27½ cents; this year 30½ cents, or an increase of 11 per cent.

Rough, merchantable pine lumber, at Oakland, last year cost $13.50 per 1,000 feet; this year, $16, or 19 per cent more than last year.

Car stock f. o. b., Oregon and California mills, last year cost $13; this year the same material cost $16, or 23 per cent more.

Rough, merchantable redwood lumber cost last year $15 per 1,000 feet, and this year cost $17, or an increase of 14 per cent.

Rough, clear redwood has increased from $26 to $31, or 19 per cent.

Milled redwood has increased from $26 to $30, or 15 per cent.

Brick last year cost $5.75; this year, $7; increase, 22 per cent.

Pig iron last year cost $23.25; this year, $25.50; increase, 10 per cent.

Illuminating oil increased during the same period from 14 cents to 16½ cents, or 18 per cent.

Sheet steel increased from 1.41 to 2.24 cents, or 59 per cent.

Fire-box steel rose from 2.16 cents to 2.64 cents, or 22 per cent.

First-class passenger cars in 1902 cost $7,430, and in 1903 cost $9,000; increase, 21 per cent.

Stock cars which in 1901 cost $546 increased in 1902 to $707, or 30 per cent.

Mogul freight engines costing in 1901 $12,725 in 1902 cost $15,840, or 24 per cent more.

Consolidation freight locomotives increased from $15,000 in 1901 to $17,800 in 1902, or 19 per cent.

Passenger locomotives increased from $13,700 in 1901 to $16,700 in 1902, or 23 per cent.

Where figures are given comparing prices in 1901 and 1902, respectively, we have no corresponding prices for 1903; but as the prices of material and labor have increased the prices of locomotives and equipment can not fail to be higher in 1903 than in 1902.

During the present fiscal year, on account of the higher cost of living generally, we have been obliged to increase the wages of nearly

all of our employees, the result being to enormously increase the cost of operating. For example, the wages of conductors, brakemen, engineers, and firemen have been increased about 15 per cent, yardmen have been increased 15 per cent, the wages of telegraph operators and agents have been increased 7½ per cent, whilst large increases have also been granted machinists, boiler makers, and other shop employees.

The expenses have also been affected through the railroads having to handle much larger increases in traffic than they were prepared to do with existing facilities, and, although money has been freely spent to increase them, the result has been congested terminals and shops, as well as inability to make repairs on locomotives and equipment when necessary. With the increased expenses any reduction in rates would result in still smaller net returns.

While it is true that the citrus fruit has not been moved as expeditiously as formerly, the fact remains that this has been a preferred service, and, while all traffic has been delayed, the preference has been given to the orange traffic, and general traffic has been discriminated against, it has been moved faster and has been given a classification higher than any other freight moved over the company's lines.

Damage claims paid on shipments of citrus fruits for the past twelve months have aggregated $40,000, or about 4 per cent of the total earnings on citrus fruit, through and local. The total loss and damage on the Pacific System, on account of all freight, has amounted to $146,000 for the first ten months of the present fiscal year, or only one-half of 1 per cent of the total commercial freight earnings, showing the claims on citrus fruit to have been out of all proportion to those on other traffic.

The effect of the heavy increase in prices paid for material in 1903 over those paid in previous year, which were in addition to heavy increases in prices in 1902 over the year preceding, as well as a rise in wages generally, is shown in the general operations on the Southern Pacific lines for the present fiscal year to date, as compared with the same period of 1902 and 1901. According to the report of the comptroller of the company the gross earnings of all the Southern Pacific lines for the ten months ending April 30 (last report issued for 1903) shows as follows:

1901	$64, 017, 677. 00
1902	70, 295, 512. 00
1903	73, 092, 502. 00

The operating expenses and taxes for the same periods were:

1901	$42, 059, 298. 00
1902	46, 950, 989. 00
1903	51, 940, 206. 00

The earnings, after deducting operating expenses and taxes, for the same periods were:

1901	$21, 958, 378. 72
1902	23, 344, 522. 91
1903	21, 152, 295. 64

Thus, although the earnings increased in the two years in question something over $9,000,000, the expenses increased nearly $10,000,000, leaving considerably less net earnings than two years ago when much less traffic was handled, and over $2,000,000 less net earnings than

we had last year, these net earnings being previous to payment of taxes, betterments, and fixed charges.

The increase in expenses on the Southern Pacific lines is not abnormal. An examination of the increase in gross earnings, expenses, and net earnings of the various railroad lines, aggregating 157,000 miles, forming nearly 80 per cent of the total mileage of the United States, showed for the calendar year 1902 an increase in expenses of $85,000,000, and compared with the increase in gross earnings of $82,000,000 reflected a loss in net revenue for these lines of $3,000,000.

J. KRUTTSCHNITT,
Vice-President Southern Pacific Company.

Mr. KRUTTSCHNITT. The slow time and indifferent service claimed in connection with the orange rate was not due, as claimed by Mr. Call, if you will pardon the expression, to the "cussedness" of the railroads who were indifferent to making time because, as he said, they had divided up the freight amongst them, but it was due to a fact that personally and through our traffic and operating officers we had for the last three years been impressing on the California public, and that was that following the enormous development of business that followed the Spanish war none of the locomotive and car works in the country were able to turn out locomotives and cars fast enough to meet the orders of the railroads or the demands of the public. Despite enormous orders we put in, orders of 120 or 130 new locomotives, we would find before they were delivered that even with these orders we would be shorter than before the orders were placed; and for the past four years we have been trying to catch up, and the reason the service was better last year, which is admitted in the testimony, was because we had finally caught up.

Another statement is made in here that is glaringly incorrect. This is in the testimony of Mr. Call, and the statement is so astonishing to me that I will read it:

> The net income per mile of the Southern Pacific in 1895 was $2,269, and in 1903 was $4,037 per mile.

"These figures are taken from the reports filed by the railways themselves, but by the method of bookkeeping employed are grossly unfair toward the public. They are unfair in not including the earnings of subsidiary corporations which are largely supported at the expense of the railways themselves, such as the express business, the sleeping-car business, the telegraph business, and the car-line business." Having signed many of these reports to the Interstate Commerce Commission myself, I took the trouble to call on the Commission to-day to find out whether I had ever signed juggled bookkeeping reports, and I am utterly unable to understand the statement, because the Commission prescribes the form on which we shall report; it is their bookkeeping, not ours.

Furthermore, every one of the items which this gentleman said have been suppressed or kept out are clearly entered on that report. That is in the possession of the Commission, and he no doubt referred to it as the net earnings per mile are identical with the figures quoted by him. There are entries in the company's earnings for telegraph, for express business, for sleeping-car business, and for the car-line business; an item specially giving the exact amount of business to the Armour

Car Line and some 75 or 100 other private car lines to which we have paid money.

Senator NEWLANDS. Do you mean to say that there are as many as 75 to 100 private car lines in the country?

Mr. KRUTTSCHNITT. Yes; there must be that many or very near it. In looking at the page, which is typewritten, I realize that perhaps 75 may be too many, but it fills a large page of cap paper closely spaced. Although, after the explanation I have given as to where the revenue goes, it may seem to some that the railroads are making too much money, I want to call your attention to the advance figures for 1904, which have been out just a few months, published by the Interstate Commerce Commission.

The earnings for 1904 show an increase, roughly, of $66,000,000 over 1903. The expenses, an increase of $75,000,000 over 1903.

Senator NEWLANDS. That is operating expenses.

Mr. KRUTTSCHNITT. Yes, and net earnings for 1903 were $643,000,000; for 1904, $634,000,000. Dividends and surplus, 1903, $260,000,000; for 1904, $236,500,000.

Now, the railroads in the past four or five years have had their expenses largely increased through compliance with the safety-appliance act. That may have appeared at the time a very innocent act, but at a very conservative estimate, based on the number of locomotives now owned by the carriers and the number of freight cars, leaving out passenger cars, which were already equipped, it cost them about $103,000,000 to comply with that law.

There is a strong demand on the part of the public and an equally strong desire on the part of the railroad managers to fully equip their lines with block signals. Unless they do it themselves I am convinced that laws similar to the safety-appliance laws will be passed, and our lines at least have made a very pronounced beginning. But the cost of equipping a line thoroughly with block signals runs up between $800 and $1,000 a mile. There are at present between 200,000 and 300,000 miles of road in the country, of which we might say fully one-half are main lines that will have to be block signaled. The expense will therefore run up close to $100,000,000. Much work remains to be done in the way of reducing grades——

Senator NEWLANDS. How long would it take to do that if they started in all over the country at this time?

Mr. KRUTTSCHNITT. I think that will have to be answered by saying that it would depend very largely on business. If business were good, the roads would go at it and keep at it vigorously. Business is good now. The lines I represent have just placed orders for putting in blocking signals to the extent of three-quarters of a million dollars this year. We do not want to be driven to it by law; we want to do it as soon as we can. Other roads are doing the same thing.

The CHAIRMAN. Where are they to get the money to do it; where is this $100,000,000 to come from; out of the earnings, or would the roads have to borrow it?

Mr. KRUTTSCHNITT. I suppose it would depend a good deal on the condition of the earnings. A good deal will come out of earnings; possibly some will have to be borrowed.

Senator NEWLANDS. In what time could we expect the whole 100,000

miles of track, under present conditions of business, to be put in with the block system?

Mr. KRUTTSCHNITT. I did not catch the first part of your question.

Senator NEWLANDS. I say within what time could we reasonably expect, if present conditions continue, that the whole 100,000 miles of main track would be put under the block system?

Mr. KRUTTSCHNITT. I should say it would be like emptying a quart of molasses out of a cup. The first year or two we would do a great deal; then after that it would not be so fast. In other words, out of 100,000 miles necessary to be equipped, the first 10,000 miles so equipped would probably cut off, instead of 10 per cent of the danger, probably 25 per cent of the danger; and another 10,000 might cut off another 25 per cent of the danger. But after that it would go on very much more slowly. We are putting in some 700 miles of block signaling this year, but selecting the 700 miles on the most dangerous part of the road, so as to give us the maximum of safety.

Senator NEWLANDS. How much mileage do you have?

Mr. KRUTTSCHNITT. We have between 15,000 and 16,000 miles.

Senator NEWLANDS. That would be about one-twentieth.

Mr. KRUTTSCHNITT. About one-twentieth; yes. I think we have some 700 or 800 miles of block signaling in already.

Immense sums of money have been already spent for reducing grades, curves, and for shortening lines for the purpose of handling traffic cheaper, reducing the rates, and thereby developing the country. One of the gentlemen who spoke here, I think from Kansas City, told you with admirable clearness how he attributed the growth of Kansas and the Southwest to the cooperation of the merchants and the railroads. There is no question that the railroads by reducing rates have stimulated traffic, not only stimulated traffic, but by buying material—steel rails, steel bridges, steel cars—have stimulated manufacturing and have promoted the general wave of prosperity that has been moving over the country for the past four or five years, and even now seems to be higher than ever.

The heavier loads that we put in our cars, the heavier duty we have imposed on our locomotives, has required heavier cars and heavier locomotives. There are at present some 1,600,000 freight cars in the United States. A small proportion only are of metal; but we have already noticed that with the advent of the metal car the wood car is disappearing at a rate increasing in geometrical progression. Instead of having a few hundred wrecked and smashed a year, they are wrecked and smashed by the thousands; they are furnishing the buffers between these metal cars. The roads are going to require very large amounts of capital to replace these cars.

To anticipate a question, not all of that, of course, will go to capital account; a large amount will go to operating expenses, because these cars will replace old ones.

Senator NEWLANDS. Your aim in carrying on your expense account is to keep your road with its present equipment and its present condition, and anything that improves the road or increases the equipment you charged to betterments, I presume?

Mr. KRUTTSCHNITT. To a certain extent only. The roads are charging very liberally at the present time betterments to operating expenses. There was a time, perhaps—some ten or fifteen years

ago—when the opposite policy was pursued. It was extremely sharply criticised. Attention was drawn to it at the time of the exposure of Reinhart, who was president of the Atchison Railroad. He had charged immense sums that should have gone to operating expenses to betterments—had made an incorrect showing of the books. The pendulum has, perhaps, swung to the other end of its path, and the roads are very generous now in charging small betterments to operating expenses.

Senator NEWLANDS. That operates to the advantage of the public.

Mr. KRUTTSCHNITT. Unquestionably.

Senator NEWLANDS. And prevents increased capitalization?

Mr. KRUTTSCHNITT. Unquestionably.

Senator NEWLANDS. I understand that in England they charge more liberally to betterments, and in that way they increase their capitalization?

Mr. KRUTTSCHNITT. Yes. I learned from some of these European gentlemen who attended the railroad congress here, especially some Englishmen, that they are accustomed to charging everything to capital——

Senator NEWLANDS. And that accounts, possibly, for the very large excess of their capitalization per mile over the American roads.

Mr. KRUTTSCHNITT. It is $260,000 a mile. On the American roads at the present time the capitalization is $62,000 a mile—over four times as much in Great Britain as here.

Senator NEWLANDS. And that is partly accounted for in this way, is it not?

Mr. KRUTTSCHNITT. Without doubt; and partially accounted for by, I suppose, the greater value of property over there. It is a more densely peopled country and property is more valuable, and then their roads are built from the beginning of a very much more expensive type than ours.

Senator NEWLANDS. They carry the roads over the highways or under them?

Mr. KRUTTSCHNITT. Yes; and yet in the best American practice to-day that is being done, and more and more money will be needed for the separation of grades. Our light wooden and metal bridges are being taken out. Hundreds of bridges that are perfectly good, built of metal eighteen or twenty years ago, are being taken out simply because the rolling stock at the present time is too heavy for them.

The CHAIRMAN. What is that charged to, betterments or operating expenses?

Mr. KRUTTSCHNITT. The practice on our line is to charge to operating expenses a sum necessary to replace the old bridge, and the increased weight is charged to betterments.

Another item causing a large increase in operating expenses is the scarcity of ties. That is requiring the erection of treating plants to increase their life.

Increase of traffic has necessitated an increase in the capacity and a rebuilding of almost every yard in the country, rearranging of terminals, lengthening of sidings, to take the increased length of freight trains. Separation of grades at highways is being actively pushed. The advent of the electric car has introduced a number of new problems. States and counties are chartering electric roads to

cross the steam lines at grade and it requires the installation of interlocking plants to prevent accidents, or the separation of grades.

Another item of increased expense is the increase in the number of employees. I have a diagram showing this, which I will insert.

Another expense which a large number of roads have voluntarily incurred is that of providing superannuation and pension funds for employees. A beginning only has been made. Unquestionably more and more of that will be done in the future.

Senator NEWLANDS. Does a road make the entire contribution to that pension fund, or do the employees contribute to it also?

Mr. KRUTTSCHNITT. Of all of the roads that are paying pensions at the present time, my understanding is they all pay the sum in full. I do not know of any to which the employees contribute.

Senator NEWLANDS. Does that fund cover cases of accident and things of that kind?

Mr. KRUTTSCHNITT. I do not know of any road that makes it cover the case of accident.

Senator NEWLANDS. Of injury to the employees?

Mr. KRUTTSCHNITT. No, sir; it is for superannuation. The roads are being held in much stricter account by the courts than ever before. Personal injury accounts are running up and fellow-servant acts have been passed.

Senator NEWLANDS. Increasing the liability?

Mr. KRUTTSCHNITT. Increasing the liability, and practically making a common carrier an insurer of its employees. There is not a road in the country that does not show a large increase in that account.

The CHAIRMAN. What do you think of that question? Do you think that Congress should legislate on it and make the roads liable for the fellow-servants? [After a pause.] I want to get your judgment on it.

Mr. KRUTTSCHNITT. I was just waiting, trying to find some language in which to give my opinion of that politely.

The CHAIRMAN. Our resolution requires us to inquire into that.

Mr. KRUTTSCHNITT. To inquire into that?

The CHAIRMAN. Yes, sir.

Mr. KRUTTSCHNITT. I do not see why one rule should apply to the carrier that does not apply to every other employer of labor.

The CHAIRMAN. They might make the rule universal.

Mr. KRUTTSCHNITT. If the rule was made universal, we would not have so much occasion for complaint.

The CHAIRMAN. It would be just as expensive.

Mr. KRUTTSCHNITT. Yes; just as expensive; but if the public is willing to pay it, by paying rates sufficient to enable us to pay these damages, well and good.

The CHAIRMAN. If the Commission reduces the rate, how are you going to get it?

Mr. KRUTTSCHNITT. That is exactly why we are here. We understand thoroughly well that a commission's regulation of rates means a commission's reduction of rates. We have been there before with the States, and we know what this thing means. We know how it works.

Senator NEWLANDS. They never raise them?

Mr. KRUTTSCHNITT. Never.

Senator NEWLANDS. Of course, it is assumed that all the money paid on such accounts, accidents and so forth, constitute a part of the operating expenses, and it will have to be paid out of the gross income that is paid by the shippers?

Mr. KRUTTSCHNITT. And to show you how well grounded is the fear of this regulation of the making of rates, I know of one instance of a State commission that has several times in its annual reports called attention to the outrageous verdicts that were rendered by the juries of the States against the carrier, and called attention to the enormous increase in its operating expenses; yet the same commission is one of the worst that we have to deal with in reducing rates.

The CHAIRMAN. What State is that?

Mr. KRUTTSCHNITT. I said one of the States. You would not expect me to be invidious, would you?

The CHAIRMAN. I thought the State escaped my notice. I did not know you omitted the name purposely. Excuse me if you did not mention the name of the State.

Mr. KRUTTSCHNITT. I did not. I have made a note here showing the damage and injury to persons was, in 1897, 1.04 per cent of the gross earnings. In 1903 it was 1.46 per cent; an increase of 42 per cent in that period.

Senator FOSTER. Covering what period?

Mr. KRUTTSCHNITT. Between the years 1897 and 1903.

Senator NEWLANDS. Have you ever thought how much it would cost all the railroads of the country to insure their employees against accident?

Mr. KRUTTSCHNITT. Not of the whole country, but for our own lines; I have looked into that. I have looked into that for our lines.

Senator NEWLANDS. Have you made an estimate of what it would cost per annum?

Mr. KRUTTSCHNITT. No; not in the aggregate. It was a table of rates that was submitted by some of the insurance companies. I could not say, offhand, how much it was.

Senator NEWLANDS. Clearly, if that was sanctioned by a law in interstate commerce, it would have to be regarded as one of the operating expenses of the corporation, and rates would have to be adjusted in order to give the company the necessary additional money to pay it.

Mr. KRUTTSCHNITT. The question arises whether that is fair to the public. The German Government, which requires employers to pension superannuated employees, divides the burden, and requires the beneficiary to contribute to this fund.

Senator NEWLANDS. I believe there the employer contributes a certain proportion and the employee a certain proportion, and the State itself a certain proportion.

Mr. KRUTTSCHNITT. I think it is divided between the employer and the employee.

Senator NEWLANDS. Oh, it is? Equally?

Mr. KRUTTSCHNITT. Equally.

Senator NEWLANDS. Would not that really, if it could be carried out, work more satisfactorily than the passage of bills, called " fellow-

servant bills," that make the company responsible for the negligence of fellow-servants?

Mr. KRUTTSCHNITT. I do not think there is any doubt of it. A fellow-servant bill, if you reason the thing out, is almost putting a premium on negligence.

The CHAIRMAN. Go ahead with your statement.

Senator NEWLANDS. You think it would work more satisfactorily in the end to the employees, would it not?

Mr. KRUTTSCHNITT. I should think that it would. I should think that it would tend to give them a greater feeling of responsibility, a feeling that they were not getting something for nothing, that they were not objects of charity. I think, Mr. Chairman, that I have gotten through with my statement. Perhaps it might be well for me to explain a little more fully than I did the fact that the per diem rate, as to which you asked a question, is one interchanged by the carriers. One carrier charges it to another, and receives payment in kind, whilst of course with the mileage rate, when we pay for a private car it is really a rental or lease. But, as I said, the value of these cars on which we pay these rates, which is the same rate that the carriers used to pay amongst themselves, is for a car that costs on the average about twice as much as the ordinary car; the refrigerator cars cost from $1,000 to $1,200, and the ordinary box car costs from $600 to $800.

Senator CLAPP. Why should not the icing charge, whatever it might be—should be—be a part of the charge of the carrier, so that the shipper would have to deal with but one party?

Mr. KRUTTSCHNITT. Simply because the carrier has no means, over the United States, of buying ice and putting it in these cars, and it seems to me to be a service foreign to transportation, and one the trouble for which would hardly be placed on the carrier.

Senator CLAPP. Take your own company, where you only use refrigerators a small portion of the year; you say that you find it to your advantage to rent cars of some company that can be using them somewhere all the year. But the particular ice that is used on your line has got to be put up, either there or shipped in there, by yourself or by the car company. It would cost no more, would it, if you put it up or bought it?

Mr. KRUTTSCHNITT. The car company puts up its own ice houses.

Senator CLAPP. That is true.

Mr. KRUTTSCHNITT. I am going to try to give you my idea of why we could not do it as cheaply as they could. They are organized all over the United States to do this work, and ought to be able to do it much cheaper than a railroad company could that would be handling a small tonnage of ice.

Senator NEWLANDS. And only through a certain part of the year.

Mr. KRUTTSCHNITT. And only through a certain part of the year.

Senator CLAPP. The testimony of Mr. Lincoln, of the Missouri Pacific, was that on their road they used some of their own cars, and they also used cars of other railroads, just as you exchange freight cars indiscriminately, and they also used some of these private cars; but that where they used their own cars or the cars of other railroads they did the icing themselves and did it at a less price than the private car company charged.

Mr. KRUTTSCHNITT. Perhaps the conditions on the Missouri Pacific are such that they can do that. But the Missouri Pacific is a line that handles, no doubt, a very large amount of dressed beef, packing-house products, and other perishable products, and they can very profitably maintain ice houses over this system and keep men the year around to do the work. The conditions are different on the Missouri Pacific from what they are on the Central Pacific.

Senator NEWLANDS. You will remember that in the case of the Missouri Pacific the cars were not owned by the Missouri Pacific Railroad Company, but by a holding company in which the Missouri Pacific and two other lines were interested.

Senator CLAPP. That may be; but Mr. Lincoln's statement was that where the railroad owned the refrigerators or used the cars of other lines indiscriminately, as they use freight cars, there they did their own icing, and they did it at a very much less price than the icing that was done by the private car lines. Where is the ice brought from; do you know where the ice is brought from that comes to these ice houses on your line?

Mr. KRUTTSCHNITT. It is in some cases manufactured ice, and in some cases it is pond ice.

Senator CLAPP. It is what?

Mr. KRUTTSCHNITT. It is pond ice.

Senator CLAPP. Where is the pond ice brought from?

Mr. KRUTTSCHNITT. From lakes up in the Sierra Nevada Mountains.

Senator CLAPP. From along the line of your road?

Mr. KRUTTSCHNITT. Put up along the line of the road.

Senator CLAPP. Now, would there be any great difference in your company putting up that ice, or manufacturing it, instead of the outsider putting it up or manufacturing it?

Mr. KRUTTSCHNITT. I could not tell you unless I went into it and made a careful estimate of the ice business. My personal opinion always has been that the attention of everybody on the railroad should be kept practically confined to the two rails, and to do nothing else—not to get into outside business. It is a practical condition. I have always discouraged the railroad going into anything but the practical transportation of freight.

Senator CLAPP. A great many railroads do handle ice?

Mr. KRUTTSCHNITT. You have just cited the case of the Missouri Pacific.

Senator CLAPP. In your own knowledge, is not that a fact?

Mr. KRUTTSCHNITT. I think it is.

Senator CLAPP. The complaint seems to be very strong against the carrier having to deal with two parties in this matter.

Mr. KRUTTSCHNITT. I think that is merely a matter of business with the shipper; that we are not responsible at all. And it is his business to furnish the ice if he needs it. He only needs it what you might be called hemi-semi-occasionally.

The CHAIRMAN. Are you through with your statement?

Senator CLAPP. I beg pardon. I understood that he had already finished.

Mr. KRUTTSCHNITT. Yes, sir; I am through.

Senator NEWLANDS. Would it not be possible for all the railroads

throughout the country who have this demand for refrigerator cars for two to three months during the year to form a central company that would own these refrigerator cars, in which the different railroads would be stockholders, and then shift the cars about from one railroad to another, so as to keep the cars constantly employed?

Mr. KRUTTSCHNITT. I have had a dream of that sort that has run back for a dozen years, Senator, but never have been able to work it or get anything practical on it.

Senator FOSTER. Your statement has been not only interesting, but also very instructive, and I would like to have you state to the committee very briefly your objections to conferring this revisory power upon the Interstate Commerce Commission or some other tribunal which Congress might establish.

Mr. KRUTTSCHNITT. It seems to me I would state that very briefly by stating that I have never been persuaded of any strong desire that they should have it.

Senator FOSTER. That is a question before the committee, and we are instructed by the Senate to make a report upon that special matter.

Mr. KRUTTSCHNITT. It is reasonably well understood that the Commission itself for the past four or five years have been harping on the subject in their reports. One of the Interstate Commerce Commissioners, to whom I listened to-day with great interest, in speaking of the woes of the Commission, seemed to lay great stress on the fact, or greatest stress on the fact, that they could not get witnesses to testify. Now, while I am not a lawyer or a legislator, it seems to me that is a matter that ought to be very, very easily settled; that the Commission could very easily be given power to require witnesses to testify.

The objection to letting them name the rates, it seems to me, is obvious. In the first place, I said that rate regulation, as we understand from past experience with State commissions, means simply rate reduction. They are eternally watching the carrier to see if he is getting a little money ahead, and if he is, reducing the rate and taking it away from him.

Now, taking the rate-making power out of the hands of the railroads, it seems to me, is fatal to initiative. There would be no incentive to do particularly better. There would be a sort of laissez-aller policy adopted by railroad managers that they say is rather characteristic of France, where there is a good deal of rate regulation done. They do just about well enough to keep out of trouble, and that is all. There is no encouragement under a system like that to bring about better results. Why should any road, with a commission watching its revenues and seeking every chance to keep them down, try to make improvements and betterments? Why not keep things just about good enough to keep out of trouble?

The CHAIRMAN. You think the rate-making power there would lead to divided responsibility, that it would impair the service to the public, and probably impair the net earnings?

Mr. KRUTTSCHNITT. Do I think that would follow?

The CHAIRMAN. Yes, sir.

Mr. KRUTTSCHNITT. Yes, sir; I do. We have an object lesson in France. I understand the rate making in France is done by a board of experts of some 30 or 35 men, and that as a result of their en-

deavors, from 1870 down to date, they have not reduced rates at all; that they are about 1.6 cents a ton-mile, rather over twice what our rate is, and that has not changed from 1870 down to date—that is, for thirty-three years. Now, alongside of it, the rate in the United States has fallen from 2 cents in 1870 to three-quarters of a cent at the present time; and I understand also that the Government that is behind these roads has put up about a thousand millions—a billion of dollars—for them in the past twenty-five years to make good losses.

Senator FOSTER. It has been stated that should this power be conferred upon the Interstate Commerce Commission it would beget such apprehension on the part of the railroads that it would more than likely create disturbances and pretty widespread alarm in railroad circles. Do you share that opinion?

Mr. KRUTTSCHNITT. I do. I do not think there is any doubt of that. Anyone who has watched the course of things for the past five or six months in the value of securities would probably reach the conclusion that there was something the matter somewhere; that people were getting scared.

Senator FOSTER. Now, Mr. Kruttschnitt, why should that be?

Mr. KRUTTSCHNITT. Simply for this reason: If the Commission were clothed with the authority to make rates, there is a want of responsibility for the results of the rates which would certainly scare investors and security holders. I do not see how it could help it.

Senator NEWLANDS. Have not the courts shown recently an increasing disposition to protect investments of common carriers? Have they not strengthened decisions every year, almost, in the line of assuring them the proper returns?

Mr. KRUTTSCHNITT. I do not think the carriers or the public have any fear or any complaint of the higher courts of the land. They get fair treatment. But I do not think that a commission or a tribunal without responsibility for results or revenues would have a beneficial effect on the business conditions of the country.

Senator NEWLANDS. Will not the investors feel assured that if any such regulating body does do any injustice the courts will correct it?

Mr. KRUTTSCHNITT. The way it is now they do.

Senator NEWLANDS. They would under any system that could be adopted.

Mr. KRUTTSCHNITT. No. Under this system that is proposed, if I understand it at all, the Commission would go ahead and make their rates, and the damage would be done, and that damage would continue until the courts corrected it, and in the meantime the railroads would be the sufferers.

Senator NEWLANDS. Yes; I see. You object to the rate going into operation before the decision of the court?

Mr. KRUTTSCHNITT. Yes; and it seems to me that the Government has the necessary machinery now to regulate these matters.

Senator NEWLANDS. If that were done away with, if the rate were not made operative until the decision of the court upon it was obtained, the proceedings of the courts, however, being expedited so as to reach a decision within a reasonable time, would not that objection to regulation by a commission disappear?

Mr. KRUTTSCHNITT. I do not think any rate should go in before the carrier had a right to appeal to the courts; and furthermore, it seems

to me that the law as it is now can remedy everything that the public has to complain of. The Commission in its reports has time and again stated, and they have attempted also to demonstrate before this committee, that the question of rebates has largely vanished or practically vanished since the passage of the Elkins law. Discriminations are practically unheard of except between localities. They will never vanish.

The greatest trouble, it seems to me, is a trouble that Professor Ripley called attention to the other day, what he called the wasted energies of the carriers, and that is due to the fact that they can not get together, they can not confer, they can not agree, they can not consult, without having the shadow of a prison door over their officers. That is due to the construction placed on the Sherman Act, that I think was foreign to the ideas of the men that passed it; but it has been so construed that roads can not agree. They can not get together. Now, if they were allowed to do that, or if that part of the act relating to them, or if the act were made inoperative as to the railroads, permitting them to get together to discuss methods of serving the public with the least waste of capital, which, after all, the public must pay for in the end, allowing them to make agreements, allowing them to confer, subject to the approval of the Commission, there is no doubt in my mind that a great deal of the trouble that we have that is still complained of would vanish.

Senator NEWLANDS. Would you include in that pooling arrangements?

Mr. KRUTTSCHNITT. I do not think that the roads would want to pool much. I have stopped using the word. It has been clothed with such sinister meaning that I never use it.

Senator NEWLANDS. You mean an arrangement that would not involve putting the moneys into a common fund and dividing them according to some rule?

Mr. KRUTTSCHNITT. No, sir.

Senator NEWLANDS. You had not that in mind?

Mr. KRUTTSCHNITT. No, sir. Possibly, in some cases, you might want to do that. Do anything that is legal. Let the Commission criticise it; let them have the right of approval. Then, again, let them help along the condition of affairs that these gentlemen from Kansas City spoke to you about, that the representatives of these other corporations spoke to you about; that there is no difficulty with the public, and the users of the railroads and the railroads, getting together and reaching understandings and agreements. Do not allow anything in the way of underhand work, discriminations and rebates, but let them get together properly and encourage and help them along. The Commission did that in the earlier days of its existence and did a great deal of it.

Senator NEWLANDS. That could be done under the direction and protection of the Commission itself, could it not?

Mr. KRUTTSCHNITT. Yes, sir.

Senator NEWLANDS. And they would stand on guard to see that nothing wrong was done?

Mr. KRUTTSCHNITT. Yes; that is it. They can stand on guard now, but if they have not enough power to properly keep watch, give it to them. Give them power to make witnesses testify when they send for them, and give them the power to require them to do it.

Give them all the power that is necessary to hunt out and ferret out rebates, discriminations, and all illegal practices. I do not think there would be a railroad in the country that would not be with the Congress and with the President on that line.

The CHAIRMAN. I want to ask you one or two questions. Going a little further in conferring power upon the Commission, you think that power would be exercised in the direction of lowering rates all the time, and never increasing them; that it would be a reduction of rates?

Mr. KRUTTSCHNITT. My fear of the future is based on experience of the past.

The CHAIRMAN. And this power would be exercised to reduce a rate, particularly if it was complained of as being too high?

Mr. KRUTTSCHNITT. I am quite confident that that would be the result.

The CHAIRMAN. Any reduction of rates would result in a reduction of expenses, would it not?

Mr. KRUTTSCHINITT. A reduction of rates would reduce expenses?

The CHAIRMAN. I mean, first, that if a road was obliged to reduce its rate it would try to reduce expenses, would it not—operating expenses?

Mr. KRUTTSCHNITT. Naturally.

The CHAIRMAN. In order to recoup itself. Would not that be one of the effects of its getting less income, less revenue? Would it not lead to the reduction of expenses?

Mr. KRUTTSCHNITT. Naturally.

The CHAIRMAN. If you reduced expenses, would it not first affect labor—wages?

Mr. KRUTTSCHNITT. The very first thing. Take a natural reduction of revenue which comes about in hard times. The very first thing that the railroad management looks about for is something to maintain the margin between earnings and expenses, and if the earnings fall, the expenses, somehow or other, must fall.

The CHAIRMAN. It would affect wages, would it not?

Mr. KRUTTSCHNITT. It would affect first of all wages and maintenance.

The CHAIRMAN. And, second, the purchasing of materials, would it not?

Mr. KRUTTSCHNITT. Yes; and the prosecution of betterments.

The CHAIRMAN. Of betterments on the roads? Would it not then affect the ability of the road to pay the fixed charges and dividends?

Mr. KRUTTSCHNITT. Unquestionably.

Senator KEAN. It would affect the number of men employed more than anything else, would it not?

Mr. KRUTTSCHNITT. The very first effect is to reduce the number of men employed. The road, when it meets a fall in earnings, begins to cast around to get rid of some men. They reduce shop forces and track forces, and stop purchases.

Senator KEAN. Instead of having six or eight men in a section they reduce it to five?

Mr. KRUTTSCHNITT. Yes; or sometimes more than that. I recall places where I have had sections with only one or two men on. Somehow or other you have got to maintain the margin between earnings and expenses.

The CHAIRMAN. If you affected the revenue to such an extent that it might affect the fixed charges and dividends, then it would affect the power of the railroad to borrow money, would it not, in the end?

Mr. KRUTTSCHNITT. Unquestionably.

The CHAIRMAN. For needed improvements, extensions, and so forth?

Mr. KRUTTSCHNITT. Certainly.

Senator NEWLANDS. How would it affect the question of new industries? It is the custom of railroads to give a very low rate, is it not, to new industries in order to build them up?

Mr. KRUTTSCHNITT. That was formerly the case. There is not very much of that done now.

Senator NEWLANDS. There is not?

Mr. KRUTTSCHNITT. No. Our encouragement to new industries is largely in the way of giving them facilities.

Senator NEWLANDS. Do they not give them pretty low rates to the distant markets in order to get their products out?

Mr. KRUTTSCHNITT. That becomes a regular part of the tariff, and it becomes a part of the fixed policy of the wise traffic manager to so reduce his rates as to produce tonnage.

Senator NEWLANDS. Would it affect that at all?

Mr. KRUTTSCHNITT. It would affect it in this way, that an industry that came along and proposed to a railroad that it should spend a given sum of money to provide it with sidetracks and facilities for doing work would be met with some kind of an excuse; perhaps it would be invited to spend all or part of the expense of the sidetracks itself. And naturally, if their revenues were being cut down by some other power somewhere else, it would not be in their power to make as low rates to the new industry, because all of the rates can not be lowered.

The CHAIRMAN. Then, coming back to the effect of the reduction as affecting the ability of the railroads to pay fixed charges and dividends, would this fact, too, tend to lessen the quantity of purchases of material for the improvement of the road?

Mr. KRUTTSCHNITT. Cutting down revenues?

The CHAIRMAN. Yes.

Mr. KRUTTSCHNITT. Unquestionably. I wrote out a long list of things here that the railroad would naturally require large sums of money for; and if they are unable to get it, they can not do that work.

The CHAIRMAN. I believe that is all now.

Senator NEWLANDS. You say that you have about 15,000 miles in your system?

Mr. KRUTTSCHNITT. I think it is between 15,000 and 16,000.

Senator NEWLANDS. That is about the largest system in the country, is it not?

Mr. KRUTTSCHNITT. Yes; I think it is. Perhaps the Rock Island may have about as much. I do not remember.

Senator NEWLANDS. You think that the tendency toward consolidation of roads is a healthy evolution, do you not?

Mr. KRUTTSCHNITT. Yes; I think the Sherman Act is largely responsible for it. It drove them into it.

Senator NEWLANDS. Drove them into it?

Mr. KRUTTSCHNITT. Yes; because there was no other way to protect themselves.

Senator NEWLANDS. And you regard the sharp competition between roads which has been forced upon them by the policy of the legislation as really resulting in this system of rebates which has existed and may be largely responsible for it, do you not?

Mr. KRUTTSCHNITT. Unquestionably. The sharper the competition the greater the tendency to pay a rebate, because a rebate is really nothing more than something paid for a man's business—it is a bid for his business.

Senator NEWLANDS. And this evolution of consolidation has had a tendency to diminish that evil, has it not?

Mr. KRUTTSCHNITT. Unquestionably.

Senator NEWLANDS. And to bring about equality of rates and equality of services as between individuals?

Mr. KRUTTSCHNITT. Yes; and to reduce the price of service, because consolidation has resulted in lopping off a great many expenses.

Senator NEWLANDS. Yes.

Mr. KRUTTSCHNITT. I had in mind, when I adverted to what Professor Ripley said in regard to this wasted energy, that the roads are now maintaining thousands of agencies in the territories of other roads in order to rob the other fellow of his business. All of that would be done away with if they were allowed to agree and to get together.

Senator NEWLANDS. Now, I do not understand that there has been any complaint as to the gross revenues that the railroads of the country are receiving.

Mr. KRUTTSCHNITT. I have not heard anything before this committee, and I have been here off and on for five or six days, nor have I heard from the communities on our lines, any complaint about high rates. Naturally, if you send a man out and say, "Would you not like to have the rate on this reduced?" he would tell you, "Yes."

Senator NEWLANDS. But the great trouble is as to the distribution of the burden of the cost of transportation?

Mr. KRUTTSCHNITT. That complaint exists to-day and it will exist to-morrow, and I think it will exist to the end of the world.

Senator NEWLANDS. But improvements can be effected on that line, can they not?

Mr. KRUTTSCHNITT. We have kept the communities reasonably happy. Of course Chicago thinks that New Orleans is getting ahead of her, and New York thinks that Chicago and New Orleans are both getting ahead of her, and they are always complaining and fighting all the time; but we have kept reasonable peace between them.

Senator NEWLANDS. Assume that all the roads in the intermountain and coast region of the West were consolidated into one system. Would not the advantages which many towns have by reason of intersecting lines, and of lowered rates, which that always produces, as compared with local stations, largely disappear? Would there not be a tendency toward equalization as between communities as the result of consolidation?

Mr. KRUTTSCHNITT. Now, I do not think so. You can take, for instance, different points on our lines where the management is

unified. There is just as bitter competition between localities as ever existed.

Senator NEWLANDS. Just as bitter competition, but is there not a tendency toward equalization of rates as between those communities? Leaving out, of course, water carriers, but where the competition is just between railroads, and the intersecting railroads are combined under one system, is there not a tendency toward equalization of the conditions that now exist as between intersecting places and the places that are simply local stations along the line?

Mr. KRUTTSCHNITT. The trouble is, I do not see how we can leave out of consideration water competition, because that is the thing that introduces most of these troubles.

Senator NEWLANDS. There are many of these places where there is no water competition. There is no water competition in that entire region which your system serves, is there?

Mr. KRUTTSCHNITT. In Nevada the water competition regulates more or less the rates, because they could get the product by rail, or from the Pacific coast by rail and water combined. I do not really see how the unification of the consolidation of systems would have much effect in doing away with the competition of these places. That is inherent in their geography—due to their places on the map.

Senator NEWLANDS. I do not mean that it would do away with the competition between places, but it would do away, to a great extent, with advantages that these places receive in the rates of transportation over neighboring towns that are not at the points of intersection. I simply asked your opinion in regard to that. I understand your view is that it would not affect that much.

Now, just another question. I observe in the newspapers that there is a still further consolidation going on in connection with the Atlantic, through the New York Central. Is that an accomplished fact?

Mr. KRUTTSCHNITT. Not only is it not an accomplished fact, but I do not think there is anything in it except newspaper talk.

Senator NEWLANDS. I should think it was a consummation devoutly to be wished, myself.

Mr. KRUTTSCHNITT. No; I do not know that there is any foundation for the report. On the other hand, I would say this: That if they were going to do it I probably would not know anything about it.

Senator NEWLANDS. I would just like you to give, for the benefit of my constituents in Nevada, an explanation of the reason why Reno has to pay a higher rate of transportation to Chicago than San Francisco, which is farther off?

Mr. KRUTTSCHNITT. I might venture an opinion on that, but I am not familiar with the rates prevailing on that system. It is foreign to my work, and I would not feel competent to.

Senator FOSTER. What is the population of Reno?

Senator NEWLANDS. About 8,000—approaching 10,000 rapidly.

I wanted to ask you if you could give us any estimate of the amount of money, new capital, that would be required within the next five years, either by all the railroads of the country, or, if you are unable to give that, by your own system, as an illustration, for extensions and improvements.

Mr. KRUTTSCHNITT. I could only forecast the future by looking over the past. On the lines that I have the honor of representing we

have spent, since 1900, $131,000,000 in betterments and changes of line and rectification of grades.

Senator NEWLANDS. Is that new capital or taken from earnings?

Mr. KRUTTSCHNITT. Partly both. I suppose probably about a quarter or a third. A quarter of it, say, is taken out of earnings, I suppose, and the balance from capital.

Senator NEWLANDS. A good portion of this time the system of your railways has been without dividends, has it not?

Mr. KRUTTSCHNITT. Yes; the Southern Pacific never has paid any dividends.

Senator NEWLANDS. Can you give us any idea at all of what, within reason, we could expect under present conditions all the railroads of the country to require in the way of extensions and improvements and betterments in the shape of new capital within the next five or ten years?

Mr. KRUTTSCHNITT. It would be impossible to estimate that, because I do not know the conditions of these other roads, and the amount of money they spend would largely depend upon the price of money and the volume of their earnings. If they are earning freely, they spend freely, so that it is impossible to make that estimate. I did as to signaling, because I can see perfectly well that our lines and the other lines must face that.

Senator NEWLANDS. You mean as to the block system?

Mr. KRUTTSCHNITT. Yes, sir.

Senator NEWLANDS. And there are other improvements that are contemplated, of course, by all railroads?

Mr. KRUTTSCHNITT. Yes, sir; a great many—better cars and stronger bridges, and so forth.

Senator NEWLANDS. And double tracking?

Mr. KRUTTSCHNITT. Yes, sir; there would be double tracking, quite a good deal of that.

Thereupon, at 11 o'clock p. m., the committee adjourned until tomorrow, Saturday, May 20, 1905, at 11 o'clock a. m.

A PAPER PREPARED FOR SUBMISSION TO THE SENATE COMMITTEE ON INTERSTATE COMMERCE BY SLASON THOMPSON.

INTRODUCTION.

WHAT ARE THE FACTS?

Out of a miscalculation by the auditor of the Interstate Commerce Commission in March, 1904, that the readjustment of freight rates since 1899 had caused an increase of $155,475,502 in railway earnings for the year 1902–3, has come the present acute agitation for Government fixing of rates. The subsequent report of the statistician of the Commission proved that the auditor had more than doubled any possible effect of the revised classification of January, 1900, while the coincident advance in the cost of labor and materials indicated that but for some revision of rates the net losses of the railways would have brought the country face to face with an industrial panic.

The apparent increase in revenues due to any advance in rates was $67,556,299.

The increase in the cost of labor due to the average advance in wages was $40,373,501.

The increase in the cost of fuel alone, due to the advance in price, was over $41,000,000.

This official error of itself would not have been sufficient to start the agitation if the public mind had not been previously misled by persistent misstatements of facts in regard to the following points:

1. That railway rates are excessive;
2. That they are overcapitalized;
3. That their capital is concentrated in a few hands;
4. That it absorbs an undue proportion of their earnings; and
5. That they are reckless of human life.

It is the purpose of the following pages to show that not one of these conclusions is warranted by the facts.

The three allied industries in the last census year.

	Capital.	Net income.	Per cent on capital.
Agriculture	$20,514,001,838	$1,724,179,206	8.4
Manufactures	9,835,086,909	1,905,185,604	19.3
Railroads	11,491,034,960	525,616,308	4.6

I. As to American Freight Rates.

That freight rates on American railways are the lowest in the world, and had steadily tended downward until the recent advance in wages and material, is proved by the following statements:

Average rate of revenue per ton per mile.

	Cents.		Cents.
1870	1.990	1895	0.839
1882	1.240	1896	.806
1887	1.030	1897	.798
1888	1.001	1898	.753
1889	.922	1899	.724
1890	.941	1900	.729
1891	.895	1901	.750
1892	.898	1902	.757
1893	.879	1903	.763
1894	.860		

Pay of trackmen.

	Wages per day.		Wages per day.
1895	$1.17	1900	$1.22
1896	1.17	1901	1.23
1897	1.16	1902	1.25
1898	1.16	1903	1.31
1899	1.18		

Compare the advance of 5.4 per cent in the rate since 1899 with 12.9 per cent in wages of the most numerous body of railways employees since 1898.

ADVANCE IN PRICE OF MATERIALS.

That the cost of railway supplies has advanced even more rapidly is shown by the following comparison of prices paid for some of the principal classes of material between 1899 and 1903:

		1899.	1903.	Increase.
				Per cent.
Rails, steel	ton	$18.00	$28.00	55.5
Ties:				
Oak	each	.435	.54	24.1
Cedar	do	.35	.48	37.7
Track bolts	100 pounds	1.80	2.75	52.7
Track spikes	do	1.425	1.95	36.8
Wire, barbed	do	2.25	3.05	35.5
Bar iron	ton	22.00	36.00	63.6
Angle bars	100 pounds	1.00	1.75	75.0
Castings:				
Gray iron	ton	26.70	39.00	46.0
Malleable iron	do	50.00	63.00	26.0
Couplers	set	16.00	18.00	12.5
Cast-iron pipe	ton	15.40	32.00	107.7
Lumber:				
Bridge stringers	M feet	18.50	23.25	25.6
Pine piece stuff	do	14.00	19.00	35.7
Nails:				
Wire	100 pounds	1.50	2.00	33.3
Cut	do	1.30	2.20	69.2
Wheels, car, 33 inch	each	5.85	8.60	47.0
Locomotives	do	9,000.00	15,000.00	66.6

FOREIGN FREIGHT RATES.

In England the Northeastern Railway, the only British road giving intelligible statistics, shows the following average receipts per ton-mile in 1902:

	Cents.
On minerals	1.93
On merchandise and live stock	2.94
On all commodities	2.32
Pennsylvania Railroad on much the same classes	.58
Average revenue per ton-mile:	
In Germany	1.42
In France	1.55
In Austria	1.16
In Hungary	1.30

The rates of American railways are low in order to move the greatest quantity of freight. As wages are high they have to depend on rigid economies of operation to make their small margin of profit.

It costs 25 cents a mile to move a ton of freight from the farm or the factory to the station; it costs less than three-fourths of a cent a mile to transport it thence to its destination.

AS TO PASSENGER RATES.

The average revenue of the railways for carrying passengers 1 mile since the organization of the Interstate Commerce Commission has been as follows:

	Cents.		Cents.
1888	2.35	1896	2.02
1889	2.17	1897	2.02
1890	2.17	1898	1.97
1891	2.14	1899	1.98
1892	2.13	1900	2.00
1893	2.11	1901	2.01
1894	1.99	1902	1.99
1895	2.04	1903	2.01

Where passenger rates have declined nearly 6 per cent since 1892 the average daily wages of the men most directly employed in train service have increased as follows:

	Per cent.
Enginemen	9
Firemen	10
Conductors	10
Other trainmen	14

The recent increase in receipts per passenger mile is due to losing the cheapest passenger traffic, which is traveling by trolley, and not to an increase in rates.

The cost of passenger service is constantly increasing to meet the demand for more trains and greater speed.

FOREIGN PASSENGER RATES.

England.—First class, 4 cents; second, 2.5 cents; third, 2 cents; average receipts per passenger mile about 2 cents.

Germany.—Fast trains: First class, 3.45 cents; second, 2.55; third, 1.79. Ordinary trains: First, 3.06 cents; second, 2.3; third, 1.53, and fourth, 0.77 (not allowed on fast trains); average receipts per passenger mile about 1.07 cents, due to 90 per cent of travel being third and fourth class on cars little better than American box cars.

TRAVEL FOR ONE DAY'S PAY.

Distance one day's pay of laborer will carry him in different countries.

	Miles per day's pay.
United States	65
Great Britain	35
Government railways:	
Germany	53
France	40
Belgium	36
Italy	38
Russia	38
India	21

PAY OF RAILWAY LABOR.

[American and foreign.]

If American railway freight rates were in proportion to American wages in comparison with foreign wages, they would be from four to eight times what they are, as the following figures, from official sources, prove:

Average pay of railway laborers in various countries whose freight rates are more than double American rates.

	Per day.
United States [a]	$1.31
United Kingdom	.71
State railways:	
Germany	.57
France	.52
Belgium	.48
Italy	.42
Russia	.29
India	.08

[a] The lowest paid class of railway employees.

Average pay of several classes of railway employees in the United States, Great Britain, and Belgium, 1903.

	United States.	Great Britain.	Belgium.[a]
	Per day.	*Per day.*	*Per day.*
Enginemen	$4.01	$1.62	$1.01
Firemen	2.28	.91	.72
Conductors	3.38	1.22	1.08
Other trainmen	2.17	.85	.72
General office clerks	2.21	.....	1.11
Station agents	1.87	1.01	1.38
Machinists	2.50	1.50	.85
Carpenters	2.19	1.22	.84
Switch and crossing tenders and watchmen:			
Men	1.76	.91	.48
Women	.....	.....	.16

[a] Belgium is chosen for the comparison because the pay of railway labor there is less complicated with premiums and allowances than elsewhere on the Continent. See Bulletin No. 20, Department of Labor, and Fifteenth Annual Report of the Commissioner of Labor.

II. Capitalization.

AMERICAN RAILWAYS NOT OVERCAPITALIZED.

In 1903 the Interstate Commerce Commission summarized their capitalization thus:

Stock	$6,155,559,032
Funded debt	6,444,431,226
Total railway capital	12,599,990,258
Owned by railroads	2,318,391,953
Net railway capital	10,281,598,305

COST OF RAILWAYS AND EQUIPMENT.

The Interstate Commerce Commission in 1903 reported as follows:

Cost of road (193,823 miles)	$10,273,837,190
Cost of equipment	[a] 699,767,723
Total cost	10,973,504,903

This cost covers a total mileage for all tracks of 283,821 miles. It is the large cost of sidings, yard tracks, elevating tracks, and other facilities at terminals rather than the construction of new road that has caused recent additions to railway capital.

[a] During the last four years new locomotives, passenger and freight cars cost upward of $874,000,000. The cost of the equipment reported in 1903 was approximately:

	Number.	Average cost.	Total cost.
Locomotives	43,871	$11,000	$482,581,000
Passenger cars	38,140	6,000	228,840,000
Freight cars	1,715,249	700	1,200,674,300
Total cost of equipment	.....	.....	1,912,095,300
Cost of road, as above	.....	.....	10,273,737,723
Cost of 11,490 miles not represented	.....	.....	608,973,000
Cost of road and equipment	.....	.....	12,794,806,023

HOW THE WATER HAS BEEN ABSORBED.

For twelve years—1888 to 1899, inclusive—an average of 63.94 per cent of American railway stocks paid no dividends—the lowest amount paying being 29.83 per cent in 1896, and the highest 40.61 in 1899. Not until 1901 did a majority of railway stocks pay any dividends whatever. Even last year 43.94 per cent paid nothing. During all these years the water in railway stock was gradually absorbed by millions diverted from stockholders to vast extensions, betterments, and improvements. On June 30, 1895, there were 37,855 miles of operated railways, representing $2,439,144,503 of capital, in the hands of the receivers. Before they got out the water was effectually squeezed out of them. At last accounts there were only 1,185 miles under receiver's orders.

AMERICAN VERSUS FOREIGN CAPITALIZATION.

The test of comparison with foreign railway capitalization furnishes the following demonstration:

	Miles.	Capitalization or cost of construction.	Capitalization per mile.
United Kingdom	22,485	$6,225,144,565	$277,474
Germany (State)	32,125	a 3,364,290,000	104,725
France (State)	23,938	a 3,415,400,000	143,058
Russia (State)	36,462	a 2,700,000,000	76,055
Austria (State)	12,402	a 1,370,109,725	110,475
Hungary (State)	10,813	a 701,640,866	64,888
Belgium (State)	2,496	a 419,410,490	167,868
Holland (State)	1,084	a 145,885,000	137,101
Switzerland (State)	2,498	a 267,305,470	104,250
Norway (State)	1,274	a 50,175,000	39,384
Sweden (State)	2,416	a 106,419,875	44,048
Denmark (State)	1,113	a 46,800,000	41,900
Total foreign railways	148,087	18,935,810,010	127,896
United States:			
Gross (1903)	205,313	12,599,990,268	61,309
Net (1903)	205,313	10,281,598,305	50,077
Cost of construction	205,313	12,794,806,088	62,319

a Cost of construction.

NOTE.—Although American railways are capitalized at less than one-half foreign railways, they were constructed by labor costing from two to four times as much. (See Wages in different countries.)

III. DISTRIBUTION OF RAILWAY CAPITAL.

The bogy that railway ownership is being dangerously concentrated was refuted by the report of the Interstate Commerce Commission, February 24, 1905, "that the number of stockholders reported by the carriers in their annual reports for the year ending June 30, 1904, was 327,851." As the holding of railway bonds is even more general, owing to their character as approved securities in estates and trusteeships, the total of those directly interested in railway stocks and bonds must approach 700,000.

A still further distribution of interest in railway securities comes through the large holdings of trustees, administrators and executors of estates; of bankers and brokers for long lists of customers, and of insurance companies, banks, savings banks, and other corporations.

How great is this last distribution may be judged from the follow-

ing statement of railway stocks and bonds held by various corporate bodies:

Insurance companies licensed in Massachusetts	$845,889,038
Savings banks in six States	442,354,086
Security from educational institutions	47,468,327
Total	1,335,711,451

An illustration of these holdings of railway securities is afforded by the reports of the following companies:

New York Life Insurance Company (bonds)	$207,334,800
Mutual Life Insurance Company (bonds)	94,982,000
Mutual Life Insurance Company (stocks)	18,860,000
Prudential Life Insurance Company (bonds)	25,977,230
Travelers' Insurance Company (stocks and bonds)	21,823,000

The fire risks in force in the United States amount to over $27,000,000,000. More than half the assets of the companies writing this insurance is invested in railway securities.

The significance of these figures is emphasized by the further fact that in the whole United States there are over 17,000,000 life insurance policies in force covering $10,508,478,776, and 7,305,228 depositors in savings banks whose deposits aggregate $2,935,204,845. These millions are all indirectly interested in the present conservative and progressive management of American railways.

IV. Compared with Investments in Agriculture and Manufactures.

Instead of paying excessive returns on capital the net income from railway investments is less than that from agriculture or manufactures—the two great industries whose prosperity is so largely dependent on cheap freight rates—as the following tables demonstrate, according to census and interstate-commerce reports:

	1890.	1900.	Per cent increase.
CAPITAL OR VALUE.			
Agriculture	$16,082,267,669	$20,514,001,838	27.6
Manufactures	6,525,156,486	9,835,086,909	50.7
Railroads	9,437,343,420	11,491,084,960	21.8
GROSS PRODUCTS OR INCOME.			
Agriculture	2,460,107,454	4,739,118,753	92.6
Manufactures	9,372,437,283	13,014,287,498	38.9
Railroads	1,051,877,633	1,487,044,814	40.0

	Cost of operating, 1900.	Income from operation.	
		Net income, 1900.	Per cent to capital.
Agriculture	$3,014,939,546	$1,724,179,206	8.4
Manufactures	11,109,101,894	1,905,185,604	19.3
Railroads	961,428,511	525,616,303	4.6

In 1903, with a gross income of $1,900,846,907 from operation, the railways paid $444,067,795 in interest and dividends, being at the rate of 3.53 per cent on the gross or 4.32 on the net capitalization.

These figures prove conclusively that the return on railway capital is not excessive, either absolutely or relatively to capital invested in farms and manufactures, which owe their prosperity to cheap, rapid, and efficient railway transportation.

How the gross earnings of American railways were distributed in 1903.

Gross earnings from operation	$1,900,846,907

WHERE THIS INCOME WENT.

Pay of employees	$775,321,415
Fuel for locomotives	146,509,031
Oil, etc., for locomotives	7,798,642
Taxes	57,849,569
Permanent improvements	41,948,183
Miscellaneous deductions and deficits in weak lines	44,681,341
Material for—	
Locomotives, renewals and repairs	50,000,000
Freight car renewals and repairs	50,000,000
Passenger car renewals and repairs	15,000,000
Bridges	20,000,000
Rails	12,000,000
Ties	20,000,000
Ballast	10,000,000
Buildings	15,000,000
Loss and damage	13,726,508
Payments for injuries to persons	14,052,125
Hire of equipment, car service, etc	20,253,945
Rents for tracks, yards, and terminals	19,375,696
Rents for buildings and other property	5,151,803
Train and station supplies	27,856,669
Shop tools, repairs and renewals	8,739,157
Law expenses	6,783,692
Stationery and printing	11,232,465
Advertising	5,376,368
Miscellaneous expenses	8,791,765
Interest on bonds	277,891,209
Dividends	166,176,586
Surplus income	49,330,740
Total	1,900,846,907

In this connection the following comparison is enlightening:

Share of labor and capital in gross earnings of railways in United States, England, and Germany.

	Per cent.
Labor:	
America	40.8
England	27.3
Germany	35.4
Capital:	
America	23.4
England	38.2
Germany	35.2

Returns from one-third of the railways for 1904 indicate that the pay of employees absorbed more than 42 per cent of the gross earnings last year.

In America labor, fuel, and taxes absorb more than one-half the gross earnings, capital less than one-quarter.

As it is only in America that the lion's share of the gross receipts falls to labor, it becomes of interest to follow its distribution among the several classes of employees.

HOW RAILWAY PAY IS DIVIDED.

Compensation paid to employees for the year ending June 30, 1903.

	Total compensation.	Per cent to each class.
Trackmen	$103,426,685	13.34
Laborers	84,209,290	10.86
Shopmen	84,133,168	10.84
Trainmen	66,221,636	8.54
Enginemen	64,173,695	8.29
Stationmen	60,463,462	7.80
Conductors	39,932,537	5.15
Firemen	37,484,286	4.84
Carpenters	36,535,645	4.59
Machinists	33,414,964	4.31
General office clerks	30,486,272	3.93
Switch tenders, crossing tenders, and watchmen	27,162,555	3.50
Section foremen	21,430,984	2.77
Station agents	21,011,794	2.71
Telegraph operators and dispatchers	19,902,487	2.58
General officers	13,244,121	1.71
Other officers	10,010,039	1.29
Employees—floating equipment	5,082,788	.65
One road undistributed[a]	18,000,000	2.32
Total	775,321,415	100.00

[a] Report of Interstate Commerce Commission (statistics of railways), 1903.

AS TO UNJUST DISCRIMINATION.

As for rebates, private car lines, industrial tracks, and terminal privileges, or any other device whereby unjust discriminations are given, the present laws, if enforced, would seem to be sufficient to put a stop to them. If they are not, Congress should immediately strengthen the hands of the Interstate Commerce Commission for the detection and prosecution of the offenders. Because there are black sheep in railway circles it is not a "square deal" to hamstring this most complex and vital of American industries. A wise surgeon would not attempt to cure a man who squints by cutting off his legs. What legs are to a man, rates are to the railways.

None of the railway abuses of which the people complain is going to be cured by substituting mileposts for brains, the rigidity of law for the elasticity of business principles in the adjustment of rates.

V. As to Railway Accidents.

Relatively to passenger and freight traffic, fatalities to passengers and employees are less on American than foreign railways, as the following table shows:

Year.	Country.	Mileage.	Killed.	
			Passengers.	Employees.
1901	Russian Europe	28,962	93	458
1902-3	Norway	1,430	1	4
1902	Sweden	7,421	6	21
1902-3	Denmark	1,879	.....	27
1903	Germany	34,014	73	505
1902	Holland	2,023	3	23
1902	Belgium	2,827	6	36
1900	France	23,938	a 94	314
1902	Switzerland	2,469	5	28
1896	Spain	7,994	19	31
1900	Italy	9,879	33	63
1902	Austria	12,402	11	87
1903	Hungary	10,813	11	66
1903	United Kingdom	22,435	156	497
	Rest of Europe	8,937	25	100
	Total	177,363	536	2,259
1903	United States	207,977	321	3,233

a Since 1900 French reports cover only accidents to trains.

ACCIDENTS RELATIVELY TO TRAFFIC.

The following tables show the proportion of fatalities to traffic in Europe and the United States:

	Passengers carried 1 mile.	Passengers killed per billion carried 1 mile.	Freight tons carried 1 mile.	Employees killed per billion tons carried 1 mile.
Europe a	44,080,000,000	12.16	76,209,092,720	29.65
United States	20,915,763,881	15.35	173,221,278,993	18.66

a Including United Kingdom.

As invidious comparisons are often made between the accidents on American and British railways, the following facts should have a corrective effect:

	Passengers carried 1 mile.	Freight tons carried 1 mile.
British railways	9,660,000,000	15,572,000,000
American railways	20,915,763,881	173,221,278,993

Proportion killed to passengers carried 1 mile.

Great Britain	1 in 61,923,000
United States	1 in 65,168,143

GENERAL LIABILITY TO ACCIDENT.

That undue prominence is given to railway accidents is shown by the following statement of "accidents resulting from causes to which all men are exposed, without regard to their employment," taken from the yearbook of the Travelers' Insurance Company for 1905:

	Per cent.
Accidents to pedestrians	24.14
At house (indoors)	18.80
Horses and vehicles	18.16

	Per cent.
At house (outside)	15.98
Recreation	6.15
Railroad travel	4.77
Bicycle accidents	4.06
Street-car travel	2.74
Use of firearms	1.73
Animal bites	1.52
Assaults	1.20
Steamship travel	.70
Miscellaneous	.05
	100.00

NOTE.—Only 1 in 10 of the accidents in railroad travel were to passengers.

GENERAL SAFETY OF RAILROAD TRAVEL.

From reports covering 122,194 miles of American roads for the year 1904—the most disastrous in the history of railway accidents—the following statement representing mileage in every State in the Union is reassuring:

Companies reporting.	Miles operated.	Passengers carried 1 mile.	Killed in train accidents.	
			Passengers.	Employees.
43	35,876	5,298,911,102	0	151
11	31,796	3,980,840,777	11	135
54	67,672	9,279,751,879	11	286

These figures which could be made more impressive, if all the reports were available, prove that the impression that American railways are less careful of human life than foreign roads rests on a widespread misapprehension of the vast difference in the extent and volume of their traffic.

SATURDAY, *May 20, 1905.*

The committee met pursuant to adjournment.

Present: Senators Elkins (chairman), Cullom, Kean, Dolliver, Clapp, Foster, and Newlands.

The chairman stated that Senator Foraker would be absent to-day on account of continued illness.

STATEMENT OF MR. A. B. BROWN.

Senator KEAN. Please state your name and address.

Mr. BROWN. My name is A. B. Brown; address, care of Britton & Gray, Washington City. I am counsel for the Atchison, Topeka and Santa Fe Railroad Company, and have been for many years.

In the statement given by Mr. George A. Mead on May 17, pages 24 and 25 of the print, Mr. Mead makes the statement that Mr. Leeds, the manager of the Atchison, Topeka and Santa Fe refrigerator lines, stated before the Interstate Commerce Commission in October last that he was paying rebates. Naturally that statement seemed to very strongly impress the committee at this hearing, and the chairman suggested that the committee should have before it the testimony that Mr. Leeds gave before the Commission. I have a copy of that testimony, appearing on pages 145–153 of the pamphlet entitled "Before the Interstate Commerce Commission. In the matter of the trans-

portation of freights by common carriers in cars not owned by said common carriers. Orders, testimony, and statement of exhibits. Washington, Government Printing Office, 1904."

J. S. LEEDS, having been called as a witness, was duly sworn, and testified as follows:

Mr. MARCHAND. Mr. Leeds, you are connected with the Santa Fe Refrigerator Line, are you not?

Mr. LEEDS. Yes, sir.

Mr. MARCHAND. What is your position with that company?

Mr. LEEDS. I am manager.

Mr. MARCHAND. How much equipment do you own?

Mr. LEEDS. About 4,600 cars—4,575, I think, and 197 of them are leased to the Cudahy Company.

Mr. MARCHAND. To the Cudahy Company?

Mr. LEEDS. To the Cudahy Company, of Omaha.

Mr. MARCHAND. Is your equipment entirely refrigerator cars? Are your cars entirely refrigerator cars?

Mr. LEEDS. Yes, sir.

Mr. MARCHAND. Do you own any box cars?

Mr. LEEDS. No, sir.

Mr. MARCHAND. No stock cars?

Mr. LEEDS. No, sir.

Mr. MARCHAND. Over what lines do you operate?

Mr. LEEDS. Mainly over the Atchison road; at least we contract to take care of their business. The cars run over all roads, of course.

Mr. MARCHAND. It is a separate corporation, is it not?

Mr. LEEDS. Yes, sir.

Mr. MARCHAND. Who is the president of your company?

Mr. LEEDS. Mr. Ripley.

Mr. MARCHAND. The officers of the Santa Fe Refrigerator Line are officers of the Atchison, Topeka and Santa Fe Railway also, are they not?

Mr. LEEDS. Yes, sir; mainly.

Mr. MARCHAND. What contract or arrangement has your line with the Santa Fe?

Mr. LEEDS. We lease the equipment and have an operating contract.

Mr. MARCHAND. You lease the equipment from the Atchison, Topeka and Santa Fe Railroad?

Mr. LEEDS. Yes, sir.

Mr. MARCHAND. The Santa Fe owns the equipment?

Mr. LEEDS. Yes, sir.

Mr. MARCHAND. What are the terms of the lease?

Mr. LEEDS. We pay them 5 per cent interest on the value. We pay for all repairs, renewals, operating expenses, administration, etc.—every expense in the operation of the line.

Mr. MARCHAND. That is what you pay them?

Mr. LEEDS. Yes, sir.

Mr. MARCHAND. Now, what do they pay you?

Mr. LEEDS. Nothing.

Mr. MARCHAND. Do you get a commission?

Mr. LEEDS. No, sir.

Mr. MARCHAND. Do you get mileage?

Mr. LEEDS. No, sir.

Mr. MARCHAND. What arrangement, if any, have you with other lines?

Mr. LEEDS. Only the mileage we earn on other lines.

Mr. MARCHAND. Do you get a commission from other lines?

Mr. LEEDS. I suppose we get probably $500 a year from other lines in the way of commissions on unconsigned business.

Mr. MARCHAND. From other lines?

Mr. LEEDS. I think there are only two roads that pay any commission. The Baltimore and Ohio pays us on unconsigned business.

Mr. MARCHAND. The Baltimore and Ohio pay you, you say?

Mr. LEEDS. Yes, sir.

Mr. MARCHAND. What do they pay you?

Mr. LEEDS. 12½ per cent.

Mr. MARCHAND. On what character of business?

Mr. LEEDS. On dairy products only.

Mr. MARCHAND. What mileage does the B. and O. pay you?

Mr. LEEDS. Three-quarters of a cent a mile.
Mr. MARCHAND. You say there is another line that pays you?
Mr. LEEDS. Yes, sir; the Canadian Pacific.
Mr. MARCHAND. What does the Canadian Pacific pay you?
Mr. LEEDS. The same thing.
Mr. MARCHAND. What inducements do you offer shippers to use your equipment?
Mr. LEEDS. Good cars and good service.
Mr. MARCHAND. Do you give the shippers nothing?
Mr. LEEDS. No, sir.
Mr. MARCHAND. You surrender nothing to the shippers?
Mr. LEEDS. No, sir.
Mr. MARCHAND. Do you allow any claims?
Mr. LEEDS. None except legitimate claims.
Mr. MARCHAND. Directly or indirectly?
Mr. LEEDS. Directly or indirectly, with the exception of California on deciduous fruits.
Commissioner CLEMENTS. What about that?
Mr. LEEDS. The same as the Armour Car Line on that score.
Mr. MARCHAND. What is that?
Mr. LEEDS. I said we paid nothing except on deciduous fruits in California.
Mr. MARCHAND. Do you publish a tariff?
Mr. LEEDS. Yes, sir.
Mr. MARCHAND. In certain instances, then, you pay back part of what you charge and collect from the shipper on your tariff from the amount named in your tariff?
Mr. LEEDS. I presume so.
Mr. MARCHAND. You pay back a portion of that?
Mr. LEEDS. Yes, sir.
Mr. MARCHAND. Do you do that uniformly to all shippers?
Mr. LEEDS. I do not know that I have missed anyone.
Mr. MARCHAND. What is your object in publishing a tariff, then, Mr. Leeds?
Mr. LEEDS. This is the first year that we entered into the deciduous-fruit business in northern California, and in publishing a tariff I found in effect there a tariff, and I met the competition which I found there when we began business.
Mr. MARCHAND. Namely, what competition?
Mr. LEEDS. I do not know as I know quite.
Mr. MARCHAND. What do you think it was?
Mr. LEEDS. I think it amounts to $25 a car.
Mr. MARCHAND. $25 a car?
Mr. LEEDS. Yes, sir.
Mr. MARCHAND. By whom?
Mr. LEEDS. We had only one competition.
Mr. MARCHAND. Who was your competitor?
Mr. LEEDS. The Armour Car Line.
Mr. MARCHAND. And it was necessary to give $25 or more in order to secure the traffic—was that your idea?
Mr. LEEDS. I believed so.
Mr. MARCHAND. Did you give a uniform amount to each shipper?
Mr. LEEDS. That was my intention.
Mr. MARCHAND. Your deviation from the rate was uniform?
Mr. LEEDS. Yes, sir.
Mr. MARCHAND. Unless you gave it you did not get the traffic?
Mr. LEEDS. That was the way it presented itself to me.
Mr. MARCHAND. Why don't you get together and publish a tariff that you will adhere to?
Mr. LEEDS. I don't know as to that; I don't think I made any particular proposition to do so, and they didn't to me.
Commissioner CLEMENTS. You say this is intended to be uniform to all shippers alike?
Mr. LEEDS. Yes, sir.
Commissioner CLEMENTS. Have you any definite knowledge that it is so? Do you keep any check on that to know whether it is so or not?
Mr. LEEDS. I should know; yes, sir.
Commissioner CLEMENTS. Do you allow one shipper—what is the basis of the settlement you make?
Mr. LEEDS. It is uniformly what I have said.
Commissioner CLEMENTS. Uniformly $25 a car?

Mr. LEEDS. I think there would be some exception, as to business farther east than Chicago.

Commissioner CLEMENTS. Would it be more than that?

Mr. LEEDS. Yes, sir.

Commissioner CLEMENTS. What on eastern business?

Mr. LEEDS. An additional $10.

Commissioner CLEMENTS. $35?

Mr. LEEDS. Yes, sir.

Commissioner CLEMENTS. Is that regardless of the amount of ice? Sometimes it takes more ice and sometimes less.

Mr. LEEDS. The business is covered by what we call a fixed refrigeration charge, a fixed refrigeration tariff; of course, we take care of this business in transit, irrespective of the amount of ice necessary.

Commissioner CLEMENTS. You pay $25 back to Chicago and points west of Chicago?

Mr. LEEDS. Yes, sir.

Commissioner CLEMENTS. And $35 to points east of Chicago?

Mr. LEEDS. That is what it would amount to.

Commissioner PROUTY. Do you pay the same amount to each shipper?

Mr. LEEDS. So far as the Santa Fe is concerned; yes, sir.

Commissioner PROUTY. Do you agree to do that before the shipment is made or afterwards?

Mr. LEEDS. Before.

Commissioner PROUTY. Are your agents authorized to make that discount?

Mr. LEEDS. No; they are not.

Commissioner PROUTY. Where is the agreement made, and with whom?

Mr. LEEDS. Myself.

Commissioner PROUTY. Do your agents there know anything about it?

Mr. LEEDS. I do not think they know what it is; they may know that something of that kind is going on, but not what it amounts to.

Commissioner PROUTY. You say your company got its equipment from the Santa Fe Company?

Mr. LEEDS. Yes, sir.

Commissioner PROUTY. And pays 5 per cent on the cost of the equipment?

Mr. LEEDS. Yes, sir.

Commissioner PROUTY. And charges the Santa Fe nothing for the use of the equipment?

Mr. LEEDS. No, sir.

Commissioner PROUTY. Where does it get the money to pay these things?

Mr. LEEDS. Our means have been sufficient to meet the requirements.

Commissioner PROUTY. Your earnings from what source?

Mr. LEEDS. We get a car mileage—that is, from other lines than the Santa Fe.

Commissioner PROUTY. Your cars, when they run on other roads than the Santa Fe, draw the regular mileage of three-fourths of a cent, and sometimes three-fourths of a cent one way?

Mr. LEEDS. That is right.

Commissioner PROUTY. You say that the earnings up to the present time have been sufficient to give the use of these cars to the Santa Fe Company for nothing?

Mr. LEEDS. Yes, sir.

Commissioner PROUTY. Who keeps the cars in repair?

Mr. LEEDS. I do.

Commissioner PROUTY. Have you any reason to suppose that your earnings are better than those of other car lines?

Mr. LEEDS. No; so far as mileage is concerned, no.

Commissioner PROUTY. What part of your mileage is over the Santa Fe and what part over other lines?

Mr. LEEDS. I can only estimate that, but I should think that one-third is on lines other than the Santa Fe; that is, 65 per cent of our equipment is habitually on the Santa Fe rails.

Commissioner PROUTY. So that the payment of mileage on 35 per cent of what your cars actually run pays for the use of those cars, pays 5 per cent on what they cost and keeps them in repair?

Mr. LEEDS. There is probably some profit in refrigeration, but not very much.

Commissioner CLEMENTS. How does the shipper know that he can get this $25 and $35 back? How does the information get to him before he ships?

Mr. LEEDS. Well, he probably could not ship if he did not know it.

Commissioner CLEMENTS. How does he find it out? You say your agents there do not inform him.

Mr. LEEDS. Well, I spent about three months there in the past year.

Commissioner CLEMENTS. You have advised them all that that was done, have you?

Mr. LEEDS. We sought the business.

Commissioner CLEMENTS. And you communicated it directly to them? Is that the way of it? Does the railroad company collect the refrigeration charge along with the rate?

Mr. LEEDS. Yes, sir; the refrigeration charge, where it is fixed, is billed forward the same as the transportation charge.

Commissioner CLEMENTS. On your published rate? You publish it?

Mr. LEEDS. Yes, sir.

Commissioner CLEMENTS. That and the rail rate are added together and collected by the railroad company?

Mr. LEEDS. Yes, sir.

Commissioner CLEMENTS. At the point of shipment?

Mr. LEEDS. At the point of destination.

Commissioner CLEMENTS. What is the process for getting part of it back? Does he file a claim to it?

Mr. LEEDS. Sometimes he may. He does not always do so; no.

Commissioner CLEMENTS. Do you keep a strict account and send it back to each one?

Mr. LEEDS. I should do so.

Commissioner CLEMENTS. Do you in fact?

Mr. LEEDS. In many instances; yes, sir.

Commissioner CLEMENTS. Not in all?

Mr. LEEDS. I would do it in all if anybody made application for it.

Commissioner CLEMENTS. Do you do it in all cases, either on application or without application?

Mr. LEEDS. Yes, sir; I think so.

Commissioner CLEMENTS. You do not think any shippers ship and pay the full rate and never get any of it back?

Mr. LEEDS. I think not.

Commissioner CLEMENTS. How much does that amount to in the course of a year?

Mr. LEEDS. I do not know.

Commissioner CLEMENTS. Have you any idea?

Mr. LEEDS. This is the first season of our entering that business. Our settlements have not been made in full. I do not know. We shall probably carry from that territory 700 cars.

Commissioner CLEMENTS. You think you will move 700 cars?

Mr. LEEDS. I think we shall.

Commissioner CLEMENTS. What months does the season cover?

Mr. LEEDS. Well, it begins in June, and they are still shipping to some extent.

Commissioner CLEMENTS. This season, you think, would cover 700 cars?

Mr. LEEDS. I think so.

Commissioner CLEMENTS. How many of those cars go to Chicago and east.

Mr. LEEDS. About 60 per cent go east.

Commissioner CLEMENTS. East of Chicago?

Mr. LEEDS. I should think so. That is an estimate.

Commissioner CLEMENTS. On those the $35 rebate would be paid?

Mr. LEEDS. Yes, sir.

Commissioner CLEMENTS. And on the others $25?

Mr. LEEDS. Yes, sir.

Commissioner CLEMENTS. That is all.

Mr. MARCHAND. I understand you to say, Mr. Leeds, that this rebate was the voluntary act of the Santa Fe Refrigerator Line and was not paid on the solicitation of the shippers?

Mr. LEEDS. It was simply a question of meeting competition or getting no business.

Mr. MARCHAND. Don't shippers out in California do as they do at other places—go shopping for a rate?

Mr. LEEDS. I imagine so, as well as anywhere.

Mr. MARCHAND. Do you know what your earnings are per car per year?

Mr. LEEDS. No; I do not know that I can tell you. Our earnings, or rather

our expenses, include the cost of ice. You understand that what we may collect would not be what would be considered legitimate earnings until you deducted that. I have not it separated and do not know.

Mr. MARCHAND. I meant net earnings.

Mr. LEEDS. I can give you approximately what they earn in mileage.

Mr. MARCHAND. Yes.

Mr. LEEDS. But that would not be a fair statement of the case for this reason: We have had a controversy with some roads in respect to payment of their mileage. On those we made no collection. They are insignificant in amount. Our earnings on foreign-line mileage amount to 30 cents a day, about.

Mr. MARCHAND. That does not include the profit on the ice?

Mr. LEEDS. That is mileage alone.

Mr. MARCHAND. Can you tell the Commission approximately what profit you make on the ice per car?

Mr. LEEDS. No; only this: I made a year ago a tolerably careful estimate of the cost of refrigeration on citrus fruit. The rate to Chicago, I think, is $62.50 and to New York $75, and other territories approximately on the same basis; and, according to our cost, we made a profit of about $4.41 per car.

Mr. MARCHAND. $4.41 per car for what length of time?

Mr. LEEDS. For the year.

Mr. POWELL. Thirty cents a day takes into account that all the cars are on your own line, does it not, whereas 65 per cent only are on your line all the time?

Mr. LEEDS. No; it takes into account that 35 per cent are on other roads.

Mr. POWELL. And that is the part you mean?

Mr. LEEDS. Yes, sir; I estimate that 35 cents a day would be a legitimate amount. Some of this is uncollected.

Mr. POWELL. I did not understand how that information got to the shippers that this rebate would be paid. It may be my fault. How does it get to the shippers? Who has it got to them through?

Mr. LEEDS. I promised it.

Mr. POWELL. Did you do it directly with each shipper?

Mr. LEEDS. I did.

Mr. POWELL. Where are your headquarters?

Mr. LEEDS. In Chicago.

Mr. POWELL. Did you do it by correspondence?

Mr. LEEDS. No, sir.

Mr. POWELL. How did you do it?

Mr. LEEDS. By coming in contact with them.

Mr. POWELL. Here or in California?

Mr. LEEDS. Both here and in California.

Mr. POWELL. You must have a medium. You say they are not your agents there. How do you do it?

Mr. LEEDS. It is not an impossibility for me to go there.

Mr. POWELL. You do go there, I suppose?

Mr. LEEDS. Yes, sir.

Mr. POWELL. Do you mean that you reach all and have reached all these shippers?

Mr. LEEDS. They are not very numerous.

Mr. POWELL. How numerous are they?

Mr. LEEDS. I do not know how numerous they are, but probably 20 or such a matter.

Mr. POWELL. That is all.

Mr. MARCHAND. Do you intrust the carriage of the rebate to the mails, or do you carry that out to California?

Mr. LEEDS. I have not carried any so far.

Mr. MARCHAND. How do you pay it?

Mr. LEEDS. By voucher.

Mr. MARCHAND. Do you send that through the mails?

Mr. LEEDS. We do.

Commissioner CLEMENTS. How do your cars move from the deciduous fruit country to Chicago, for instance?

Mr. LEEDS. Over the Santa Fe rails.

Commissioner CLEMENTS. By what route?

Mr. LEEDS. Well, the Santa Fe reaches San Francisco through the San Joaquin Valley. Our main shipping point last season was at Antioch.

Commissioner CLEMENTS. You say there is no such thing as paying part of this refrigeration charge to shippers of citrus fruit?

Mr. LEEDS. No, sir; the only sore spot we have is the one I am telling about.

Commissioner CLEMENTS. Do you know what it costs to refrigerate a car from that territory to New York?

Mr. LEEDS. Not absolutely; no. In fact, that would depend on the weather and depend on the time, and it might be different one season from another.

Commissioner CLEMENTS. Have you an idea, approximately, what the average would be?

Mr. LEEDS. I think it would require 16 tons of ice approximately.

Commissioner CLEMENTS. From California to New York?

Mr. LEEDS. To Chicago.

Commissioner CLEMENTS. On deciduous fruits?

Mr. LEEDS. Yes, sir.

Commissioner CLEMENTS. What is it worth on an average per ton?

Mr. LEEDS. Well, it is worth more on certain parts of the system than on others. Approximately, east of the Rocky Mountains, as far as I know, it is universally $2.50 per ton. West of there it runs from $4 to $8.

Commissioner CLEMENTS. Now, how is it with respect to the citrus fruits from southern California to Chicago? How much ice does that take, approximately, on an average?

Mr. LEEDS. I do not remember. I have not the figures. I did have it on last year's business, because I figured that as I testified.

Commissioner CLEMENTS. Would it be more or less?

Mr. LEEDS. It would be, I think, somewhat less. Deciduous fruit requires a little more ice.

Commissioner CLEMENTS. Would the distance and time be about the same?

Mr. LEEDS. About twenty-four hours' difference as against northern California.

Commissioner CLEMENTS. So the cost of refrigeration would probably be less on account of the less time and less amount of ice on the citrus fruits?

Mr. LEEDS. Yes, sir; it would naturally be so.

Commissioner CLEMENTS. How much of this 16 tons would be used west of the Rocky Mountains and how much east, approximately?

Mr. LEEDS. Well, there would be more ordinarily west. The original icing would take 4½ tons.

Commissioner CLEMENTS. What per cent would be east and what per cent would be west?

Mr. LEEDS. I do not know.

Commissioner CLEMENTS. How much more would be added to it in going to New York instead of Chicago?

Mr. LEEDS. Ordinarily we ice at Chicago or at the junction where we deliver to the eastern line, and twice in addition between here and New York—three icings, say, beyond the Santa Fe rails. I should say something over 4 tons.

Commissioner CLEMENTS. Additional?

Mr. LEEDS. Yes, sir.

Commissioner PROUTY. When you say $2.50 a ton, do you mean that price in the bunkers?

Mr. LEEDS. Yes, sir.

Mr. MARCHAND. Do you handle any meats or dairy products?

Mr. LEEDS. We handle dairy products, and sometimes we let the packers have some cars, but we do not handle the meat business—that is, it is handled under their auspices or supervision.

Mr. MARCHAND. In the transportation of dairy products, what arrangements have you with the shippers?

Mr. LEEDS. None.

Mr. MARCHAND. None whatever?

Mr. LEEDS. No, sir.

Mr. MARCHAND. Do you do the icing?

Mr. LEEDS. We have it done according to the rules of the railroad tariff.

Mr. MARCHAND. Do you give back those people $25?

Mr. LEEDS. We do not give them back anything; no, sir.

Mr. MARCHAND. What do you give the packers when they use your cars?

Mr. LEEDS. Nothing.

Mr. MARCHAND. You do not give them anything?

Mr. LEEDS. No.

Mr. MARCHAND. I think that is all.

The witness was excused.

Mr. MARCHAND. I will call Mr. C. R. Cooper.

Mr. BROWN. The concrete of Mr. Leeds's statement is this: That in order to meet the competition of the Armour Car Lines in the transportation of deciduous fruits from California to the East he made a reduction, uniform in amount to all shippers, approximately of $25 per car when the goods were destined to Chicago and $35 a car when they went east of Chicago. That was a reduction in the icing charge to meet the competition of the Armour lines.

Mr. Mead further undertook to say that in the testimony taken before the Commission last week in Chicago it was developed that rebates were still being paid, and that seemed naturally to strike this committee with great force. I have examined that testimony. There was no official of the Santa Fe road put upon the stand. There was quoted before the Commission the written statement of Lieutenant-Governor Anderson, of California, the head of the Fruit Distributers' Company, of California, stating in most emphatic terms that no rebates or commissions had been allowed him by any line in respect of fruit shipments.

There was put upon the stand before the Commission in Chicago a gentleman by the name of H. J. Streyckman, who undertook, without any details, to assert that previously rebates had been paid. There is not a word of detail in his testimony to show what line or lines paid them.

I have no desire to make any reflection on Mr. Streyckman, but I desire to call attention to the observation, following that statement from Mr. Mead, made by Senator Foraker:

Is he the man who testified to having stolen the code and other documents? I would rather hear Mr. Leeds than Mr. Streyckman, for I do not think we need to resort to any testimony of such questionable character.

My sole purpose in appearing here is to put upon record, in a proper way, a sweeping denial that the Atchison, Topeka and Santa Fe Company has made any discriminatory rates or paid any rebates, and I want to call sharp attention to the testimony of Mr. Leeds, which, as I have stated, in the concrete explains why reductions from the published rate were made, that they were made to meet competition. Mr. Leeds gives the details as to how it was done, and hence there was no possible discrimination against any shipper at any time, as covered by Mr. Leeds's testimony.

Senator KEAN. Was that a reduction in the tariff, or a rebate?

Mr. BROWN. It was a rebate given to everyone. You will find, from the testimony, that Mr. Leeds explained fully in regard to that. I am only speaking from the record.

Senator KEAN. But it was a rebate given to everyone?

Mr. BROWN. A rebate given to everyone. He so testified.

Senator CULLOM. I think that has already been in the testimony before the committee.

Mr. BROWN. Do you mean this volume to which I have referred?

Senator CULLOM. No; the statement you have made, I think, has already been made by others, that there were no rebates in the proper sense, at that time, but that there were reductions made.

Mr. BROWN. I am appearing here in response to telegraphic instructions from the Atchison, Topeka and Santa Fe Company.

STATEMENT OF MR. H. R. FULLER.

Senator KEAN. Please state your name and residence.

Mr. FULLER. My name is H. R. Fuller; my residence is Beaver Falls, Pa.

Senator KEAN. Please state your occupation.

Mr. FULLER. I am a railroad conductor, but I appear here representing the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen, the Brotherhood of Railway Conductors, and the Brotherhood of Railway Trainmen. I look after legislation here at Washington for those organizations. I speak wholly upon that feature of the resolution under which the committee is working which relates to employers' liability.

Senator KEAN. You desire to add to the testimony you gave last winter?

Mr. FULLER. Yes, sir.

Senator KEAN. Just call the attention of the committee to the testimony you gave last winter, and say how you desire to supplement that.

Mr. FULLER. I would like to say, Mr. Chairman, that, unfortunately, when the summons came to me I was not at home, so that the matter I had prepared on this subject I have not with me.

Senator KEAN. You will have leave to put that in.

Mr. FULLER. Yes, sir; I shall be very glad to.

While it is on my mind, I want to say this to the committee, that I have had prepared a copy of all the laws of the United States upon this subject and of the important court decisions.[a] I also have copies of all the laws of foreign countries upon this subject, and if the committee wishes them I shall be glad to send them to the committee when I go back home.

Senator KEAN. You may send them and we will have them printed as an appendix for reference. They will not go in your testimony, but they can be referred to.[a]

Mr. FULLER. Since the passage by the Senate of the resolution under which the committee is now acting, the executive officers of the organizations which I represent have taken up the question, and we have decided to urge, as a basis for what legislation you may report to the Senate, Senate bill 4092:

A BILL relating to liability of common carriers by railroads in the District of Columbia and Territories and common carriers by railroads engaged in commerce between the States and between the States and foreign nations to their employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every common carrier by railroad engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any Territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his heirs at law, for all damages which may result from the negligence or mismanagement of any of its officers,

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[a] The compilation of laws here referred to will be found in the volume of Appendices to these hearings entitled Appendix J.

agents, or employees, or by reason of any defect or insufficiency in its cars, engines, appliances, machinery, track, roadbed, ways, or works.

SEC. 2. That in all actions hereafter brought against any such common carriers by railroad to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight in comparison to that of the employer.

SEC. 3. That no contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however*, That upon the trial of such action against any such common carrier by railroad the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his heirs at law.

SEC. 4. That nothing in this act shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the safety-appliance act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three.

We suggest, however, that, in addition to the bill as it now reads, at the end of section 2 a provision be made to require that in all cases of contributory negligence that question shall be submitted to a jury; we recommend, with that addition, the passage of that bill.

Senator KEAN. Is not that the law at present?

Mr. FULLER. It is supposed to be the law, Mr. Chairman, at the present time; but, unfortunately, some of the judges do not follow that. I will show that further on. It is the law, but in some cases judges are inclined to take it away from the jury, and that has been the cause of a great deal of litigation and complaint.

The first section of this bill provides for an abolition of the doctrine of common employment, or the fellow-servant doctrine, with which every lawyer on the committee is familiar, no doubt.

Let me briefly give a little history of this matter as I have found it.

This doctrine was laid down by an English court about 1837. That is, up to that time, the employer—the master, rather, as he was then termed—was held to a strict accountability for the actions of his child and his servant. The doctrine of responsibility for the acts of a servant to others followed that, and that stood, as I understand, for centuries. In 1837 an English judge, known as Lord Abinger, held differently. Two employees were upon a wagon owned by a butcher. The wagon broke down, and the thigh of one of the boys was broken. The court held that the employer was not liable.

That rule has been taken up by the courts of our country and followed to the present day, except where it has been modified by statute.

The conditions of employment at the time this rule was laid down and those of to-day are so dissimilar that we feel that this rule should have been modified long ago by statute. At the time this rule was laid down it was at the beginning of the centralization of wealth, of great manufacturing and mechanical operations. The principal railroads of England and America were in their infancy, and no man could foresee what this development meant or what would be the development, nor was anybody able to see what it meant to apply such a rule to conditions of employment as they exist to-day.

At the time this rule was enunciated a great many of our moving vehicles were drawn by horses and oxen, whereas we now move by railroad at the rate of 60 or 70 miles an hour.

The legislatures of the majority of our States have recognized what seems to us to be the injustice of this rule, and have either modified it to some extent or abolished it entirely. But the United States courts within their jurisdictions are following the old rule that was laid down nearly a century ago, since when I might say conditions have been revolutionized. At that time two men would work together at the same bench; they had an opportunity to judge of each other's miscomings or qualifications, their habits as to carefulness, etc.; whereas now they are removed from each other miles and miles when we apply the argument to a railroad. If there was any justice in the rule at that time it has disappeared, it seems to us, entirely, when we apply it to modern conditions, especially upon a railroad.

Take, for example—without knowing the real cause, we will say—the wreck which happened on the Pennsylvania Railroad at Harrisburg the other day, in which several lives were lost. Let us say, for the purpose of illustration, that the wreck was caused by an employee. In the State of Pennsylvania there is no statutory law on the subject, and the courts are going by the old common-law rule. Let us say that the shifting engine came out on the track and, as we read in the papers, appeared right ahead of the train, which caused the engineer to apply the brakes with all the force there was in them, and that caused some of the cars to be thrown over on the other track, which cars were loaded with dynamite or powder. This big passenger train, just leaving Harrisburg, came out and ran into those cars, and the result was that some of the employees were killed and a lot of passengers were killed and injured.

Under the rule the man who caused that accident would be considered a fellow-employee with the engineer upon that train; he would be considered a fellow-employee with the conductor and the baggage master upon that train. Now, if it be true that the wreck was caused by a coemployee, those passengers who were injured and the friends of those who were killed can go into the courts and they can recover damages for those injuries and deaths, while the conductor or the engineer can not. The court says to him, "Your injury was caused by the action of a coemployee." The engineer upon that train which ran into those cars was in no better position to guard against the negligence of the man who caused that accident, if such was the cause of it, than were the passengers upon the train. The conductor was in no better position. It was a big train leaving a terminal, where probably connections had been made. The conductor, going through his train collecting transportation from his passengers, was in no position to know that just about the time they got down to that locality that engine was going to come out on the main track, that this engineer was going to apply the brakes in that way, and that as the result of that those cars were going to be thrown over on the track in front of him, and that they were loaded with dynamite. That conductor was in no position to tell any more about it than were the passengers on the train.

The railroad employee looks upon this as though he were more or less discriminated against. It may be that a lawyer would not put

it that way, but that is the way it impresses the man chiefly concerned.

As I said, a large majority of the States have modified this rule, and I would also say in this connection that the United States Government, as such, is behind practically the whole civilized industrial world upon this subject. The European countries practically all have employers' liability laws, and a number of them have gone further and passed what are known as "compensation acts," which require the employer to insure the employee against accident, to pay him regardless of how the accident may happen, the only bar being that when he is injured as the result of his own willful neglect, where he absolutely tries to get injured, then he can not recover. Under all other circumstances they are liable.

The railroad man, Mr. Chairman, looks to Congress for legislation. There is hardly a railroad employee in the country who does not at some time work upon a train engaged in interstate commerce, and he feels that it is the duty of Congress to look after his welfare in this connection, and that is why we appeal to you.

Senator KEAN. Do you think the men engaged in the railroad shops are engaged in interstate commerce?

Mr. FULLER. Well, they are working for an employer who is engaged in interstate commerce.

Senator KEAN. How about a steel corporation?

Mr. FULLER. I do not think Congress could legislate for them.

Senator KEAN. How about the Baldwin Locomotive Works?

Mr. FULLER. We ask for this legislation wholly under the constitutional provision which gives Congress the right to control interstate traffic—on those grounds solely.

Section 2 of the bill is a modification of the doctrine of contributory negligence, and I might say a recognition of the doctrine of comparative negligence. It reads:

> That in all actions hereafter brought against any such common carriers by railroad to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight in comparison to that of the employer.

We think that the doctrine of contributory negligence has outlived its usefulness or justice. For instance, in the safety-appliance law which Congress passed, it stripped the employer of the defense of assumption of risk.

Senator KEAN. You are trying to apply this rule to all railway employees—that is, putting them in a class by themselves—but I take it that you would not go so far as to give one remedy to a person working on a train and another remedy to a person working in a shop.

Mr. FULLER. There is nothing new about that proposition, Mr. Chairman. The majority of the States which have passed legislation of this kind apply it to the dangerous employments, and a great many of them specifically mention railroads.

Senator KEAN. Yes; it may be that the States have done it; but the Government of the United States could only do it for that class of employees engaged in interstate commerce.

Mr. FULLER. Yes; I have said that we base our argument wholly

upon that provision of the Constitution which gives Congress the authority to legislate upon that question.

The United States Industrial Commission, which was organized for the purpose of taking testimony and recommending legislation in the interest of labor, agriculture, and capital, had this question under investigation and took considerable testimony upon it. I wish to read a little from that report. This will be found on page 950 of volume 19 of the Commission's reports:

> On the subject of railway labor, which is undoubtedly covered by the interstate powers of Congress, the Commission are of the opinion that Congress should adopt a consistent code of law regulating all matters concerning employment in the industry, such as the hours of labor, the limitation of continuous runs by engineers, or continuous service by telegraph operators or switchmen, without periods of sufficient rest, and the enactment of a consistent employers' liability code, including a definition of the fellow-servant doctrine.

Section 2 of this bill, as I was about to say, recognizes the doctrine of comparative negligence. We do not want to ask, and do want to be considered as wanting, a law which will give a man a right to recover in the courts if he is guilty of negligence to that extent that he is responsible for his injury. We do not think that would be right. We do not think we could consistently ask for that. But we do think, when an employer is guilty of gross negligence, and the negligence of the employee, if any, is only slight in comparison, that that ought not to bar the employee from recovery. The rule as now laid down by our courts with reference to negligence puts the whole responsibility of the contributory negligence of the employee upon himself, without regard to the amount of negligence of the employer, no matter how great. We submit that that is not a good rule.

The gentleman who represented the Southern Pacific before you last evening, and in whose remarks I was very much interested, I believe stated that the passage of the employers' liability law would encourage negligence. I do not agree with the gentleman on that. I do not believe it would. I believe it would have a tendency to save human life and limb. That has been the history of such legislation in other countries. At the time this compensation act was passed in England, to which I have referred, Lord Salisbury, in the House of Lords, stated that in England the history of employers' liability legislation had resulted in the saving of human life and limb.

As this rule is applied to-day an employer may be ever so negligent, he may even be so negligent as to violate a statutory provision, and still if an employee is injured and they can possibly switch a charge of contributory negligence upon him in any degree, no matter how slight, he has no case.

For instance, a railroad company may be constructing something along its line involving the necessity of stringing an electric wire across the track; it may be at a terminal 100 miles away where the company would post a bulletin, "Look out for wire at" such a place; but by the posting of that bulletin he has been notified that the company has attended to its duty and complied with the law in that respect. The trainman, however, with all his duties between the time he reads that bulletin and the time he arrives at the place of danger, has kept that in his mind; but about the time he gets there the train rounds a curve and the engineer sees another train

ahead, or for some other reason calls for the application of the brakes; the brakeman gets out upon the train, sees the other train ahead and that there is danger, and his whole mind and body are absorbed and continue in that state, thus stopping for the moment all his memory as to the contents of that bulletin. He goes over the train and sets the brakes, forgetting all about this wire for the time being, and he is knocked off and killed or injured. If he goes into court about that injury the railroad company produces this bulletin and says, "Here we have the rule which requires the men to examine the bulletin before they go out, and this man was duly notified, and he was guilty of contributory negligence."

It may be argued that that is not a fair example of the application of contributory negligence; but since the passage of the safety-appliance law, which took from the employer the defense of assumption of risk, they have concentrated all their efforts on the doctrine of contributory negligence, and cases which previously would have been decided upon the assumption of risk now turn upon the doctrine of contributory negligence.

I will give you another example: In the safety-appliance law of 1903 the companies were required to equip their cars with automatic couplers. It is well known to every member of Congress and of the Senate that the purpose of that act was to prevent men from being required to go between cars and couple them. They were being injured and killed by the hundreds. After this law had taken effect, after they were supposed to have all their cars equipped with automatic couplers, a brakeman upon a western road was required to make a coupling between old link-and-pin couplers. He went in there to make that coupling, and he lost his hand. I sent for the briefs and arguments in that case, and I have put them in the hands of different lawyers, and they all tell me that there is nothing in the arguments or the evidence to show that that man was in the least guilty of negligence, that there was nothing more shown than that he went in there to make that coupling, and the couplings were not in compliance with the law. The eighth circuit court of appeals held that that man was guilty of contributory negligence.

In a case brought under this same law after it had gone into effect, a brakeman was required to couple a steam shovel car to a caboose. The caboose had an automatic coupler, in compliance with the law; the steam shovel car had an old link-and-pin coupler. The evidence shows that the link-and-pin coupler upon the steam shovel car was between two and three feet under the end of the car, or rather, projected that far beyond the coupler. The evidence in that case shows that he was told by his conductor to get down under and couple that steam shovel car to a caboose, and to do that he had to hold up an iron bar that weighed between 75 and 80 pounds. To do that he had to contract himself to about half his natural height in order to carry that bar under there. The evidence does not show that he had his lantern in his hand at the time, but it happened that after he was killed the lantern was found lying on the track, and it was very evident that he had had it in his hand. The little slot in the M. C. B. coupler, by which he had to steer this head bar, was only 2 inches wide. His conductor told him to keep down, and he knew himself, without warning, that he should keep down—any

railroad man would know that. The drawheads of the car, according to law, should be 34½ inches from the rail, and they should be automatic. In this case one was not automatic, and that rendered the coupling nonautomatic. The drawhead, according to the evidence, was away below standard height, so it required him to lift the iron bar that much higher to get it into the automatic coupler. Stooped down there in that extraordinary position, contracted to practically half his natural height, that man was compelled to undertake to go between those cars and steer that big iron bar into a slot 2 inches wide, but he missed the coupling; the pin did not drop. The testimony shows that he wanted his conductor to drop the pin, or asked him to look out for that, but the conductor refused, and stood out between the tracks. So the man missed the coupling, and as he happened to raise his head too high, he was struck and killed. The court held that that was contributory negligence on his part, by raising his head too high. There was a plain violation of statutory provision.

Congress said that on these interstate cars there should be automatic couplers. The agent of that company was brought into court by the plaintiff and testified as to the interstate character of that steam-shovel car. He said it was brought there from a point in New York to that point in Pennsylvania. Yet the poor widow was turned out of court and had no case.

Senator FOSTER. What case is that?

Mr. FULLER. That was the case of Schlemer *v.* The Buffalo, Rochester and Pittsburg Railroad.

Senator KEAN. This was a construction train?

Mr. FULLER. It was one of many cars belonging to a construction company going to its work in Pennsylvania. I believe there were 13 cars altogether.

Senator KEAN. Was it on the Allegheny road?

Mr. FULLER. No, sir; it was the Buffalo, Rochester and Pittsburg.

Senator KEAN. Yes; the Allegheny extension.

Mr. FULLER. It was near Punxsutawney, Pa.

In regard to the rule submitting to the courts the question of contributory negligence, Senator Kean has asked me if that is not the rule now. It is; it is, but it is not lived up to. I sent for all the briefs and testimony in that case, and I had several lawyers look them over, and also had members of Congress look over them. I said, "I would like to have your opinion upon this," and they said that at most, from the railroad company's standpoint, this was one of a class of cases that should have been submitted to the jury. But the judge said he was guilty of contributory negligence. He considered that a question of law for the court to settle.

The third section of this bill reads in this way:

That no contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however*, That upon the trial of such action against any such common carrier by railroad, the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his heirs at law.

That is simply to protect a man in his legal rights under these contracts of insurance which were made for the purpose of relieving the employer from liability. Should this become a law without a provision of that kind the objects of the law would fail, for the reason that the railroad companies would simply require, as a condition of employment, that a man should release them from these liabilities under the preceding sections. It is also to prevent contracts of insurance, which practically do the same thing. These insurance contracts are better known as "relief contracts." Several of our railroads in the country operate these big relief departments. The fund through which the employees are paid benefits in these relief departments is created by contributions of the men, but the men are required to pay it in, and the men pay a little more than 80 per cent, I believe, and the companies pay the balance. A man may belong to that relief association, and if he is injured and it is the result of the negligence of the employer, before that man can draw any benefits from that fund, of which he and his fellow-employees have made up 80 per cent, he has got to release the employer from all liability to him for that injury.

We submit that that is not a good rule. We do not think that that contributes to the safety of the men. If a company is to be released from its liability, it does not seem to me that the United States Government should in any way relieve them from the requirement of keeping their equipments in better repair and throwing greater safeguards around the men. The companies operate these relief departments. The men have a voice in them, it is true, but the laws which govern these relief associations were originally laid down for the benefit of the companies themselves. The law was so made that the company should have the majority of representation upon the boards of managers. It is an impossibility to change the laws of the associations so that the men, who have the greatest financial interest in it, or who have contributed the most of it, can control the management. I submit that if some companies who operate those relief departments were asked to allow the minority stockholders in their associations to dictate how business should be done they would probably object. It is a clear clase of the tail wagging the dog. The men pay 80 per cent of the money and the company handles the affairs of the association.

Senator KEAN. Are they well managed?

Mr. FULLER. I do not think so. I can see no good in a minority of an association—the men having the least financial interest or contributing the least—operating it to the detriment of those who contributed the most; but that is the way they are operated.

I submitted some questions to the employees upon the lines of these railroads that operate these relief departments, inquiring what, in their minds, were the real objects of the associations, and practically 100 per cent on one road, and I believe actually 100 per cent on the other, said that they thought the prime objects were to enable the companies to release themselves from liability when an employee was injured.

Senator FOSTER. Are these relief associations chartered institutions?

Mr. FULLER. I believe the Baltimore and Ohio relief was chartered under the laws of Maryland at one time; I could not say positively as to the status of it now.

Senator FOSTER. How many of those associations are there in the country?

Mr. FULLER. There are probably five or six in the country. A bad feature about it, Senator, is this: That one of the roads, particularly, which has one of these relief associations is taking in new lines every year, and they are gradually forcing that upon the men. That is unfair, and their competitors have this to contend with. Mr. Cowen, when president of the Baltimore and Ohio Railroad, testified before the Interstate Commerce Commission that the relief association on his road had practically done away with damage suits. We would all commend that if it did away with them in the proper way, but it has done away with them at the expense of the employees. We submit that it is not fair to their competitors to have a condition of that kind; it is not fair to the employees of the other roads. It has this effect upon them: I have been told by the managements of other roads that the roads which operate these relief departments had the best of them; that they did not have to go into court to answer for damages.

There is a law on the statute books to-day—the national arbitration law passed by Congress—which says that they shall not require a man to release the company from liability above the amount that they pay the man which this section provides for. But it is being violated every day. The men are required to do it. If they do not care to go into these associations, they do not get employment.

Senator FOSTER. Do you mean that the roads force their employees into these associations?

Mr. FULLER. They do force them.

Senator FOSTER. The men pay about 80 per cent, and the roads 20 per cent.

Mr. FULLER. The roads pay about 20 per cent. Prof. Emory Johnson, of the University of Pennsylvania, made an investigation of that feature, and he said that the employees contributed in the neighborhood of 80 per cent, between four-fifths and five-sixths, and the railroad companies pay the balance.

Senator FOSTER. Who has the management of the associations?

Mr. FULLER. The company has a majority on the managing board.

Senator FOSTER. How is that brought about?

Mr. FULLER. When the relief association was started there were certain rules laid down, I believe, as to how the representation of the board should be distributed, and that gave the companies the majority of the managing boards, and the employees the minority. It has been continually like that. You see the employees could not change those rules, because they were in the minority. The law of the organization when it was first made gave the company the majority on the board, and it has been impossible to change that.

Section 4 of the bill is simply a saving clause for section 8, I believe, of the national safety-appliance law. It was feared that this clause we have in here with regard to contributory negligence might in some way take from the employees the rights guaranteed by section 8 of the safety-appliance law.

Senator KEAN. Have you finished, Mr. Fuller?

Mr. FULLER. Yes, sir.

Senator KEAN. We are very much obliged to you.

ADDITIONAL STATEMENT OF MR. H. R. FULLER—MAY 20, 1905.

Mr. CHAIRMAN: As the representative of 230,000 railroad employees, I respectfully appeal to this honorable committee for the favorable consideration of Senate bill 4092, Fifty-eighth Congress.*

We believe that when you compare this proposed legislation with the laws of the great industrial countries of the world on this subject, as well as with those of a large number of our own States, you will agree with us when we say we are only asking for something that can not be classed as above that which is moderate. Indeed, it can be truthfully called mild legislation.

The objects sought to be attained by the advocates of this bill are to give the employee greater rights in the courts, by lifting from his shoulders the financial burden of that class of accidents incident to industrial employment over which he has no control, and which, in view of the present system of operation of industrial institutions, equity dictates he should not be held responsible for. And after having thus given him a standing in the courts to provide further that he shall not be deprived of those rights through mere contracts of employment, which, by force of circumstances, he is required to sign in order to be allowed to earn a living, and through the signing of contracts of insurance and relief benefits, the funds of which he and his fellow-employees furnish over 80 per cent of—contracts which if not legally are morally against public policy and should be declared void.

SECTION 1.

Section 1 of this bill provides that common carriers by railroad in the Territories and the District of Columbia, and those engaged in interstate commerce, shall be liable to their employees for damages which may result from the negligence or mismanagement of any of their officers, agents, or employees, or by reason of any defect or insufficiency in their cars, engines, appliances, machinery, track, roadbed, ways, or works.

Under a fair interpretation of the common law as it now exists the employer is already liable in most of the cases mentioned in this section; consequently his increased liability under its provisions is not nearly as great as one might think upon first reading.

For instance, it is my understanding that the employer is liable under the common law for injuries received by an employee through the negligence of his officers and agents, or by reason of any defect or insufficiency in his cars, engines, appliances, machinery, track, roadbed, ways, or works. Therefore, so far as those provisions of the bill are concerned we are only asking that you enact into statutory law that which is now the common law.

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*Senate bill No. 4092 will be found on page 3207.

This conceded, and I believe it will be by most lawyers, the only provision of this section which it can be successfully argued means new legislation is the provision which makes the employer liable for the negligence or mismanagement of "any of his employees."

In view of the fact that he is already liable under common law for the negligence of his officers and agents, the words "any employees," as they appear in this section, can only be held to apply to fellow-servants.

This brings us to the discussion of the fellow-servant doctrine, which was for so many years in England, and is now in the United States, the cause of great contention in industrial employment, and it is against the application of this doctrine by our courts, especially our Federal courts and those in the States which are governed by the common law, that the laboring classes complain, as such application works great injustice to employees and deprives them of the remedies now guaranteed to third persons, thereby denying them equal rights before the law.

Not being a lawyer I can not hope to successfully discuss this matter from a legal standpoint. I will, however, endeavor to give to you what I have found to be the history of this subject, and how it is viewed from the employees' standpoint.

In ancient Judea, Greece, and Rome we find that the master was held to a strict responsibility for the acts of his servant. The Roman law made the master responsible for the negligence of his servant and child, and compelled him to make compensation for their negligence. One of the outgrowths of this principle is the holding of the master responsible for injury received through the negligence of his servant. The first recorded case of this kind found was in England, under Lord Holt, chief justice of the King's Bench, at the close of the English revolution. No record has been found of any exception to this rule until the year 1837, when an English judge (Lord Abinger), in the following case of Priestly *v.* Fowler, departed from the old rule, which had stood for centuries.

A butcher sent one of his men on a wagon which had been loaded by another employee, but loaded too heavily. The wagon broke down and the man's thigh was broken. His lordship decided that the butcher was not liable for the injury. The reasoning on which this decision was given may well be quoted:

> If the master be liable to the servant in this action, the principle of that liability will be found to carry us to an alarming extent. He who is responsible by his general duty, or by the terms of his contract, for all of the consequences of negligence in a matter in which he is the principal is responsible for the negligence of all his inferior agents. If the owner of the carriage is, therefore, responsible for the sufficiency of his carriage to his servant, he is responsible for the negligence of his coach maker or his harness maker or his coachman. The footman, therefore, who rides behind the carriage, may have an action against his master for a defect in the carriage, owing to the negligence of the coach maker, or for a defect in the harness arising from negligence of the harness maker, or for drunkenness, negligence, or want of skill in the coachman; nor is there any reason why the principle should not, if applicable in this class of cases, extend to many others. The master, for example, would be liable to the servant for the negligence of the chambermaid for putting him in a damp bed; for that of the upholsterer for sending in a crazy bedstead; for the negligence of the cook in not properly cleaning the copper vessels used in the kitchen; of the butcher in supplying the family with meat of a quality injurious to the health; of the builder for a defect in the foundation of the house, whereby it fell and injured both the master and the servant by the ruins.

The inconvenience, not to say the absurdity, of these consequences affords a sufficient argument against the application of this principle to the present case. But, in truth, the mere relation of the master and the servant can never imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do of himself. He is no doubt bound to provide for the safety of his servant in the course of his employment to the best of his judgment, information, and belief. The servant is not bound to risk his safety in the service of the master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself; and in most of the cases in which danger may be incurred, if not in all, he is just as likely to be acquainted with the probability and extent of it as his master.

While this departure was made without, as is thought by able men, a good reason, and made, too, by one who was not a distinguished jurist, and should not have been followed as a precedent, yet it seems that the courts of the United States, as can be shown in many of their opinions, eagerly sought this precedent and, seemingly with much earnestness, have been applying it vigorously from that time until the present day, when our system of industry has, I might say, been revolutionized.

The decision of Lord Abinger came at about the beginning of the centralization of large wealth and capital in great manufacturing and mechanical operations, and at the time the principal railroads of England and America were in their infancy, and no man or set of men were wise enough to foresee the great development that was to take place nor to contemplate the importance of such a rule when applied to the new conditions of employment which must follow such development.

Modern conditions, especially in the operating of railroads, are as dissimilar to those which existed when this doctrine was enunciated that the common-law rule should now, and even long ago, have been changed by statute.

When the common-law doctrine respecting this question was enunciated there were no large factories in which great numbers of men were employed, and in places where several men were employed the tools were few and the machinery simple and wholly operated by hand or power furnished by the working of animals. There was no swift-moving machinery with numerous parts concealed. Everything was done by slow, easy stages, and each employee had not only the opportunity to get thoroughly acquainted with the tools in use, but also with his fellow employees, their habits of carefulness, and the like. If any defect existed or occurred in the simple, crude tools or machinery it was easily discovered or, if not, the slowness of the operation of the business was generally sufficient to prevent any severe personal injuries to employees.

At that time many of the fastest-moving vehicles used in passenger and freight traffic were drawn by oxen or horses. At such a time and under such conditions the common-law doctrine relating to personal injuries might have been appropriate and just; but since then factories are operated by high-speed, complicated, and dangerous machinery, the parts of which are largely hidden from view. The employees are assigned to special places, and so engrossing are their duties that they have little or no time to inspect the machine they are operating, the surroundings, nor to get acquainted with the habits of carefulness and caution of their fellow-employees.

Of course this bill does not apply to factories, but I refer to them for the purpose of illustrating how inapplicable and unjust the common-law doctrine is when applied to modern conditions.

On railroads all of the work of operating trains is done by swift and dangerous agencies and methods. In order to make the property more valuable companies require and insist that these methods be adopted and used. The work is pursued both by day and by night. The service is so exacting that it usually requires the undivided attention and a high quality of energy from each employee to perform well and satisfactorily the duty assigned to him, and thus it is a physical impossibility for him to inspect the ways, works, and machinery or become acquainted with the habits of his coemployees, who, perhaps, occupy places or who are moving along at different points over miles and miles of railroad. The employee himself is not only required to go over miles and miles of track, often upon different divisions, but it is not unusual for him to be assigned with new or strange employees upon each trip.

These conditions prevent him from learning of the habits of carefulness or lack of carefulness of his coemployees, and also prevents his habits of carefulness and prudence from influencing such coemployees. This being true, the foundation of the common-law doctrine relating to personal injuries is swept away, and therefore to apply it would be without reason or logic and must necessarily work a gross injustice to the injured employee whose surroundings are wholly dissimilar from those that surrounded employees when the doctrine was first enunciated and applied.

Railroad trains are handled and run with such expedition and speed the very sight of which dazzles the eye and confuses the mind of those outside the service, and surely under such circumstances a progressing civilization should awaken to the fact that a remedy should be found for present conditions which would more nearly afford justice to the men engaged in this all-important business of interstate traffic, which has so materially promoted the happiness and prosperity of the nation.

On a railroad the men have no choice in the selecting or keeping in the service of their fellow-employees; they have no choice of the selection of machinery or appliances, but over each of these matters the railroad company has full and complete control, and therefore when the employee is injured it is certainly only reasonable and just that the employer who is being benefited by his service should reasonably respond in damage to him on account of the injury.

As an illustration of the injustice of the rule when applied to a modern railroad, let us say, Mr. Chairman, that you and I go down here to the Pennsylvania Railroad; you pay $4 for a ride from here to Philadelphia; I hire out to that company as a conductor, and for my services between Washington and Philadelphia that company pays me $4. Neither you nor I make any agreement with the railroad company to release it from any liability for injury. We board one of the fast passenger trains, you as a passenger and I as a conductor. Things go along nicely, the train is running along at a 60-mile rate, you are at ease enjoying your ride, while I am busily engaged collecting tickets and looking after the comforts of my passengers, when suddenly the train rounds a curve and enters an open switch which

has been carelessly left open by some trainman whose negligence neither you nor I were in a position to know of or guard against; our train crashes into another train, and we are both injured. For your injury you could go into the courts and recover thousands of dollars, but the court says to me: The cause of your injury was due to the negligence of a fellow-servant, and you can not recover." And this is not an extreme case. Such accidents as this happen quite often on a railroad.

Can a fair comparison be made between a case of this kind and two servants of a butcher, who nearly every hour of the day are employed side by side and know each other's shortcomings, and consequently are in a position to guard against them? If it is justice to compensate you, why, I ask, is it not right that I should also be given the right to recover when the circumstances are the same?

I repeat, if there was any justice in the rule laid down by Lord Abinger at the time it was made it disappears, in my mind, when we seek to apply it to modern institutions and their employees. This fact is evidenced by the action of the English lawmakers when in 1880 they passed the English employer's liability act and in 1897 the workman's compensation act.

This comparative backwardness on the part of our National Government is not confined to England alone, but, as will be shown by the following synopsis of law on the question of compensation for industrial accidents to employees, we find ourselves far behind practically the whole civilized industrial world, as well as behind a large number of our own States:

ENGLAND.

In 1880 England passed an employer's liability law which greatly modifies the fellow-servant doctrine, inasmuch as it made the employer responsible for injuries received by workmen through the negligence of any fellow-employee having charge of any railway engine, switch, or signal, or of any employee having the giving of orders, or injured in obedience to any improper rule or order. This law is broad in its application, and includes agricultural laborers.

While the law of 1880 was considered a great step in reform, it did not meet the expectations of the working classes. Neither did it bear out the claims of its opponents that the employers would be driven into bankruptcy through damage suits brought by injured workmen; so in 1897 the English Government made a great leap in advance and passed what is known as the " workmen's compensation act."

This act applies to all hazardous employment, including railroads, the exceptions being seamen, fishermen, persons engaged in transport service, street-railway men, cabmen, and those who tend horses, and under its provisions the employer is not only responsible for the negligence of himself, his officers, agents, and employees, but is liable for all injuries received by employees through any cause, excepting only that which is caused through the serious and willful misconduct of the victim himself.

GERMANY.

The German law of 1838 made railroads liable to their employees for injuries, regardless of whether such injuries were caused by the

negligence of fellow-employees or not, except where it was proven that the injury was caused through the fault of the victim himself, or through some unpreventable external cause.

This law was amended several times, each time broadening its application to various kinds of employment, until in 1873 it was made to include all hazardous occupations.

Upon the recommendation of Emperor William Germany in 1884 also made a marked advance and passed a compulsory-insurance law, which requires the employer to insure his employees against death and permanent disability, regardless of whether the injury was caused by the negligence of the master or any of his employees, the only exception being an accident brought about intentionally by the victim himself.

This law applies to the more dangerous occupations, and was also made to cover public officers and soldiers.

AUSTRIA.

The Austrian employer's liability law of 1869 made railroad companies liable for all injuries to their employees, except where the accident was brought about by the victim's own negligence.

In 1887 an insurance law was passed which made the employer liable to his employees for death and all disabilities of over five weeks' duration, the only exception being when the accident was intentionally caused by the workman.

This law as originally enacted applied to employment in factories, smelting works, mineral mines, dockyards, slips, quarries, enterprises connected with the erection of buildings, or otherwise with construction work.

In 1894 its provisions were extended to include employment on all railroads and other transportation by land and water, dredging, cleaning of streets and buildings, industrial enterprises connected with storehouses, including warehouses and wood and coal yards, theaters, paid fire brigades, digging of canals, sweeping of chimneys, stonecutting, well digging, and construction work not heretofore included.

NORWAY.

In 1894 Norway passed a compulsory insurance law similar to that of Germany heretofore mentioned.

FINLAND.

In 1895 Finland passed an insurance law which requires the employer to insure his employees against all accidents, excepting only those caused by the willful or gross neglect of the victim himself.

DENMARK.

In 1898 Denmark passed a compulsory insurance law which requires the employer to insure his workmen against all accidents not occasioned intentionally or through the gross neglect of the victim himself.

Provisions of this law apply to employment in dangerous industries.

ITALY.

The Italian compulsory insurance law of 1898 requires the employer to insure his workmen against all accidents through which they are disabled for over five days.

It applies to employment in dangerous occupations, including mines, turf pits, house building, gas, electric light, and telephone works where explosives are manufactured or used, arsenal and navy-yards, and in the following enterprises where more than five workmen are employed: Construction or operation of railroads, inland transportation by water, street railways, construction and repair of harbors, canals, and dikes, construction and repair of bridges, tunnels, and ordinary national and provincial roads, and industrial establishments operated by mechanical power.

FRANCE.

Previous to the year 1898 the provisions of the Napoleonic Code relating to employer's liability were in vogue, and made the employer answerable for all injuries received by his workmen, there being no distinction between employees and third persons.

In 1898 the French compulsory-insurance law was passed. This insures the employees against accidents received directly or indirectly because of their work, except when received through the inexcusable neglect and gross carelessness of the victim his compensation for the injury may be reduced.

This law applies to employment in building trades, mills, factories, work yards, transportation by land and water, public storehouses, mines, furnaces, quarries, any enterprise in which explosives are manufactured or used and in which a machine is employed operated other than by human or animal power.

SPAIN.

Spain, in the year 1900, enacted a compulsory insurance law. Under its provisions the employer is required to insure his employees against all accidents, except those due to superior force.

It applies to employment in the following industries: Factories, shops, and industrial establishments where any other than human force is used; mines, salt works, quarries, metal works, and architectural iron and steel shops; factories and docks; construction, maintenance, and repair of buildings, including masonry and all other accessory opreations; carpenters, locksmiths, stonecutters, painters; establishments in which explosives, inflammables, unwholesome, or poisonous substances are manufactured or used; construction, maintenance, and repair of railroads, harbors, roads, canals, dikes, aqueducts, sewers, and similar operations; agriculture and forestry; where machinery operated by any other than human power is used; cartage, transportation by land, sea, or canal; cleaning of streets, gutters, and sewers; warehouses and storehouses for coal, firewood, or building timber; theaters, so far as it concerns the salaried personnel; fire brigades; gas and electric-light works; laying and keeping in repair of telephone wires; laying and removal of electric wires and lightning rods; persons employed loading and unloading, and every analogous industry or work not comprised in the preceding list.

SWITZERLAND.

Under the Swiss law of 1875, as supplemented by the acts of 1877, 1881, and 1887, the employer is responsible to his employees for all injuries received in the course of employment except those produced through the so-called acts of God, whether such injuries were received through the negligence of officers, agents, employees, or otherwise. It also made the employer responsible for diseases contracted in factories.

This law applied to the following classes of labor: Railroads, steamboats, factories, all occupations in which explosives are regularly produced or used; building trades, all operations in connection therewith; livery; care of boats and rafts; erection and repair of telephone and telegraph lines; erection and removal of machinery and other movings; streets, bridges; the operation of hydraulic engineering, and the exploitation of mines, quarries, and pits.

BELGIUM.

The Belgium law on this subject is contained in the Napoleonic Code heretofore referred to in France. It makes the employer responsible for the negligence of all his servants, and applies to all classes of employment.

HOLLAND.

The employer's liability law, as expressed in the Napoleonic Code, is also the law of Holland.

SWEDEN.

Sweden's liability law makes the employer liable for all injuries received by employees which are not due to the culpable negligence of the victim. It applies to railroads.

RUSSIA.

The criminal law of Russia makes the employer who is guilty of negligence responsible for the cost of medical treatment and subsistence of an incapacitated employee, and in addition, in case of death, the support of the dependents.

The civil common law of Russia also makes the employer responsible for the negligence of his employees as well as himself. In addition to this a special act covering railroad and steamship employees put the burden of proof upon the employer, and he can not release himself from liability only when he can prove that the accident was due to unavoidable causes or the negligence of the victim himself.

Contributory negligence, however, does not bar a recovery, but only serves to diminish the amount of the indemnity.

HUNGARY.

The employers' liability law of Hungary makes the employer liable for all injuries to his employees not due to the victim's own negligence. It applies to railroads and mining.

ROUMANIA.

In 1895 Roumania passed an insurance law which applies to mines, and requires the employer to insure his employees against accident.

The foregoing shows that six foreign states have passed employers' liability laws under which employers are responsible for the negligence of all of their employees, and ten have insurance laws which require the employers to insure their workmen against all injuries received in the course of employment, whether through the negligence of their employers or otherwise.

But, as before stated, this unfavorable comparison of our National Government is not to be reckoned with foreign countries alone, but on this question, as will be shown by the following, we are behind a majority of our own States, as well as the Territories of New Mexico and Porto Rico.

KENTUCKY.

The Constitution of Kentucky makes employers liable for deaths due to the negligence of their employees. (Kentucky Constitution, sec. 241.)

In 1894 the legislature enacted this provision into statute.

GEORGIA.

Georgia entirely abolished the fellow-servant doctrine as to railroads by statute in 1856. (Georgia Code, 1895, secs. 2297, 2323.)

IOWA.

In 1862 the legislature of Iowa entirely abolished the doctrine as to railroad employees operating trains. (Iowa Code, 1897, sec. 2071.)

KANSAS.

In 1874 Kansas entirely abolished it as applied to railroads. (Kansas General Statutes, 1889, par. 1251.)

WISCONSIN.

In 1875 Wisconsin entirely abolished it. (Wisconsin Acts, 1875, ch. 173.)

This law was repealed by chapter 232 of the acts of 1880. In 1889 the legislature enacted a new law which was more limited. (Wisconsin Acts, 1889, ch. 438.)

In 1893 this law was repealed by chapter 220, which chapter entirely abolished the fellow-servant doctrine as to men actually engaged in switching or the running of trains. In 1903 this law was amended so as to make it broader in scope. (Wisconsin Laws, 1903, ch. 448.)

MINNESOTA.

In 1887 Minnesota entirely abolished the doctrine as regards railroad employees engaged in operating railroads. (Minnesota General Statutes, 1894, sec. 2701.)

FLORIDA.

In 1887 Florida abolished the doctrine as regards railroad employment. In 1891 this law was amended somewhat, but as it now stands it practically abolishes the fellow-servant doctrine in cases where employees are injured through the running of locomotives, cars, or other machinery. (Florida Revised Statutes, 1892, p. 1008.)

OHIO.

In 1890 Ohio modified the doctrine by declaring that employees who have power to direct other employees are not fellow-servants of those employees in other departments who have not the power to direct or control in the branch or department in which they are employed. (Ohio Acts, 1890, p. 149, sec 3.)

In 1902 another law was passed which makes all employers liable for injuries to employees which are caused by reason of any defect in the condition of the machinery connected with or used in the business of the employer when such defect was due to the negligence of any person in the service of the employer, intrusted by him with the duty of inspection, repair, or of seeing that the machinery or appliances were in proper condition. (Ohio Laws, 1902, p. 114.)

MISSISSIPPI.

In 1890 by an amendment to the constitution Mississippi greatly modified the doctrine as regards railroad employees by declaring that an employee could recover for an injury received through the negligence of a superior agent or officer, or of a person having the right to control or direct the services of the party injured, and also when the injury results from the negligence of a fellow-servant engaged in another department of labor from that of the party injured, or of a fellow-servant on another train of cars, or one engaged about a different piece of work. (Mississippi Constitution, sec. 193.)

In 1892 this provision of the constitution was adopted by the legislature as official. (Mississippi Code, 1892, sec. 3559.)

In 1896 the legislature extended the provisions of this section by making them apply against all classes of corporations.

TEXAS.

By act of 1891 and an amendment in 1893 Texas greatly modified the doctrine as to railroad employees by declaring that employees having the authority of superintendence, control, or command of other persons in the employment or with the authority to direct any other employee in the performance of the duty of such employee are not fellow-servants, and that employees engaged in different departments are not fellow-servants. (Texas Revised Statutes, 1895, secs. 4560 F, 4660 G, 4560 H.)

In 1897 these provisions were also made to apply to street railways. (Texas Acts, 1897, ch. 6.)

NEW MEXICO.

In 1893 the Territory of New Mexico modified the doctrine as to railway corporations by making them liable for injuries received by employees, occurring or sustained in consequence of any mismanage-

ment, carelessness, neglect, default, or wrongful act of any agent or any employee of such corporation, while in the exercise of their several duties, when such mismanagement, carelessness, neglect, default, or wrongful act of such employee or agent could have been avoided by such corporation through the exercise of reasonable care or diligence in the selection of competent employees, agents, or by not overworking said employees or requiring or allowing them to work an unusual or unreasonable number of hours. (New Mexico Compiled Laws, 1897, sec. 3216.)

ARKANSAS.

In 1893 Arkansas greatly modified the doctrine as to railroad employees by declaring that employees having the authority or superintendence, control, or command of other persons in the employment or with the authority to direct any other employee in the performance of the duty of such employee are not fellow-servants, and that employees engaged in different departments are not fellow-servants. (Arkansas Digest, 1894, secs. 6248–6250.)

SOUTH CAROLINA.

South Carolina, in its constitution as ratified in 1895, greatly modified the doctrine as applied to railroad labor by declaring that an employee may recover for injuries received through the negligence of another employee having the right to control or direct the services of a party injured, and also when the injury results from the negligence of a fellow-servant engaged in another department of labor from that of the party injured, or of a fellow-servant on another train of cars, or one engaged about a different piece of work.

This section of the constitution also gives the legislature the authority to extend its provisions to other classes of employees. (South Carolina Constitution, art. 9, sec. 15.)

In 1901 the legislature extended the same rights to employees of street railways. (South Carolina Laws, 1901, act 405.)

MISSOURI.

In 1897 Missouri greatly modified the doctrine as applied to railroads by declaring employees intrusted by such corporation with the authority of superintendence, control, or command of other persons in the employ or service of such corporation, or with the authority to direct any other servant in the performance of any duty of such servant, or with the duty of inspection or other duty owing by the master to the servant, are not fellow-servants with such employees, and by saying that employees in any department or service are not fellow-servants with employees in any other department or service of such corporation. (Missouri Acts, 1897, p. 96.)

NORTH CAROLINA.

In 1897 North Carolina entirely abolished the doctrine as applied to railroads. (North Carolina Acts, 1897, vol. 2, ch. 56.)

NORTH DAKOTA.

In 1899 North Dakota greatly modified the doctrine as applied to railroads by giving employees the right to recover when injured through the negligence of any other employee while engaged in switching or operating trains. (North Dakota Acts, 1899, ch. 129.)

ALABAMA.

In 1885 Alabama greatly modified the doctrine as applied to all classes of employment, not confining itself to railroads alone, by making employers liable for the negligence of:

(1) Persons intrusted by the employer with the duty of seeing that the ways, works, machinery, or plant are in proper order.

(2) Persons who have any superintendence intrusted to them by their employer.

(3) Persons authorized to give the order or direction which occasioned the injury.

(4) Persons acting in obedience to rules, regulations, or by-laws, obedience to which caused the accident.

(5) Persons obeying particular instructions given by any person duly authorized in that behalf by the employer.

(6) Persons in charge of any signal, points, locomotives, engines, switches, cars, or trains upon a railway or upon any part of a track of a railway. (Alabama Code, 1897, secs. 1749–1750.)

MASSACHUSETTS.

In 1887 Massachusetts greatly modified the doctrine as regards all classes of employment except domestic and farm laborers.

This law was amended in 1892, 1893, and 1894, and as it now stands makes the employer liable for the negligence for the following classes of servants:

(1) Persons intrusted by the employer with the duty of seeing that the ways, works, or machinery were in proper condition.

(2) Persons intrusted and exercising superintendence, whose sole and principal duty is that of superintendence.

(3) Persons acting as superintendent with the authority and consent of the employer.

(4) Persons in charge of any signal, switch, locomotive, engine, or train upon a railroad. (Massachusetts Acts, 1887, ch. 270; also 1893, ch. 359, and 1894, ch. 499.)

INDIANA.

In 1893 Indiana greatly modified the doctrine as applied to employees of all corporations, except municipal, by declaring that such corporations are liable for the injuries received through the negligence of any person in the service of such corporation to whose order or direction the injured employee at the time of the injury was bound to conform and did conform; and where such injury resulted from the act or omission of any person done or made in obedience to any rule, regulation, or by-law of such corporation, or in obedience to the particular instructions given by any person delegated with the au-

thority of the corporation in that behalf; also where such injury was caused by the negligence of any person in the service of the corporation who has charge of any signal, telegraph office, switch yard, shop, roundhouse, locomotive engine, or train upon a railway, or where such injury was caused by the negligence of any person, coemployee, or fellow-servant engaged in the same common service in any of the several departments of the service of any such corporation, the said person, coemployee, or fellow-servant at the time acting in the place and performing the duty of the corporation in that behalf, and the person so injured obeying or conforming to the order of some superior at the time of such injury having authority to direct. (Indiana Annotated Statutes, 1894, secs. 7083, 7085, 7087, 7089.)

COLORADO.

In 1893 Colorado modified the doctrine somewhat, and in 1901 it completely abolished the doctrine as applied to all classes of labor.

UTAH.

In 1896 Utah greatly modified the doctrine as regards all classes of employees by declaring that employees who are intrusted by their employers with the authority of superintendence, control, or command of other persons in the employ or service of such employer, or with the authority to direct any other employee in the performance of any duties of such employer are not fellow-servants, and that all other employees are not fellow-servants unless they are working together at the same time and place, to a common purpose, of the same grade of service, and neither of such persons are intrusted by such employer with any superintendence or control over his fellow-employees. (Utah Acts, 1896, ch. 24.)

MARYLAND.

In 1902 the legislature of Maryland passed a law which applies to coal and clay mines, quarries, steam and street railroads, and makes the employer liable to his employees for injuries caused through the negligence of his servants or employees, unless a certain plan of insurance, which is laid down by the statute, is adopted. (Maryland Acts, 1902, ch. 139.)

VIRGINIA.

Section 12 of the Virginia constitution of 1902 abolished the doctrine with reference to a large class of railroad employees and permits the general assembly to enlarge this class of employees and to extend these rights to employees of any firm or corporation.

In 1902 the legislature enacted a law which greatly modified the doctrine as applied to railroad employees, by making railroad corporations liable to their employees for injuries received when such injury results from the wrongful act, neglect, or default of an agent or officer of such corporation superior to the employee injured, or of a person employed by such corporation having the right to control

or direct the services of such employee injured, or the services of the employee by whom he is injured; and also when such injury results from the wrongful act, neglect, or default of a coemployee engaged in another department of labor from that of the employee injured, or of a coemployee on another train of cars, or a coemployee who has charge of any switch, signal point, or locomotive engine, or who is charged with dispatching trains or transmitting telegraph or telephonic orders.

OREGON.

In 1903 the legislature of Oregon enacted a law practically word for word the Virginia statute just quoted.

MONTANA.

The legislature of Montana, which is now sitting, has just passed an act which completely abolishes the doctrine as applied to railroad employees.

PORTO RICO.

The Revised Statutes of Porto Rico of 1902, section 322, provides that the employer shall be liable to the employee for injury by reason of the negligence of any person in the service of the employer who has charge of, physically controls, any signal, switch, locomotive engine, car, or train in motion, whether attached to an engine or not, upon a railroad.

SECTION 2.

Section 2 of this bill is a recognition of the doctrine of comparative negligence.

The doctrine of contributory negligence, as applied by some of our courts, works great injustice to the employee, for the reason that no matter how grossly negligent the master may be, if the servant is in the slightest degree negligent he is debarred from recovery, and is therefore made to bear not only the burden of his own slight negligence, but also the burden of the master's gross negligence, thus permitting the master to go scott free and not answer in the slightest degree for his gross negligence.

It is not our desire to ask that an employee be paid for an injury that he alone is responsible for, but we do think gross negligence is worse than slight negligence, and the person guilty thereof should not be released from answering therefor simply because someone else is guilty of slight negligence.

We believe such a rule has a tendency to make the master less vigilant regarding the safety of his servants.

Some of the arguments against the fellow-servant doctrine can be applied with as much force against the doctrine of contributory negligence.

The duties of an ordinary railroad employee are so exacting that he must work with both his head and hands, and many times when called upon to perform such duties his whole being is so absorbed and taken up with his work that he is liable to a slight degree to contribute to his own injury, but would not have done so had the master not been grossly negligent.

For example, let us say a railroad company stretches a wire across the track and it is not high enough to clear a man on the top of a box car, the company posts a bulletin on a bulletin board at a terminal 75 miles from the wire in which the men are notified of the location of this wire. The brakeman starts out on his train and about the time the train arrives at the place where the wire is stretched the engineer through the darkness sees the rear end of another train on the track a short distance ahead of him, he sounds the whistle for the brakeman to apply the brakes, the brakeman responds by climbing to the top of the train, and seeing the danger ahead his whole mind is taken up with the thought of stopping his train and he speeds over the train in the darkness applying the brakes, the thought of the overhead wire having been thoroughly removed from his mind for the time being, and it strikes him and he is thrown beneath the cars and injured. If I mistake not, some of our courts would hold that he could not recover for the reason that he had been notified of the whereabouts of the wire and he contributed to his own injury by exposing himself to it, this, too, in the face of the fact that the company was grossly negligent by not providing longer poles upon which to string this wire.

Or we will say that a switch stand is too close to the track, it has been there for a long time and the train men know of the danger, but suddenly in the dark of night there is a call for brakes, and the brakeman swings out on the ladder on the outside of the car for the purpose of climbing to the top to apply the brakes, and this switch stand strikes him. I venture the assertion that some judges would say that he was guilty of contributory negligence, as he knew of the location of this switch stand and therefore was in a position to guard against it, regardless of the fact that the company was guilty of gross negligence in placing the switch stand so close to the track.

In the case of Arrighi *v.* Denver and Rio Grande Railroad Company (129 Fed. Rep., 347), Arrighi, a brakeman, in attempting to couple two cars equipped with link-and-pin couplers, which were being used in violation of the national safety appliance law, had his hand crushed. The evidence in the case does not show that he was in anywise negligent. He did nothing more than an ordinary, prudent man would have done under the circumstances, yet because he attempted to make this coupling which he was ordered to do, the United States circuit court of appeals of the eighth circuit held that he was guilty of contributory negligence.

In the case of Schlemmer *v.* Buffalo, Rochester and Pittsburg Railroad Company (207 Pa., 198) the evidence shows that the company was transporting a steam-shovel car from the State of New York to a point in the State of Pennsylvania. The drawbar upon this steam-shovel car was of the old link-and-pin type, which was in violation of the national safety appliance law. It was also much lower than the drawbar on the caboose to which it was to be coupled, which was also a violation of that law. This drawbar was also under the car about 2 feet from the end. Schlemmer, a brakeman, was ordered by his conductor to couple this steam-shovel car to the caboose, and in order to do this he had to stoop down and contract himself to about one-half his natural height, and in this position, at about 9 o'clock at night, with lamp in hand, he had to walk along under this steam-

shovel car while it was moving, watch to see that he was not run down from behind by the wheels, and guide a long iron coupling bar weighing 80 pounds, which was fastened in the drawbar on the steam-shovel car, into a slot only 2 inches wide in the automatic coupler on the caboose. He missed the coupling, and happened to raise his head a little too high, and the top of it was crushed between the steam-shovel car and the caboose, killing him instantly. His widow sought to recover damages, and the trial court held that he was guilty of contributory negligence in not keeping his head down and withheld the case from the jury, and this decision was affirmed by the supreme court of the State of Pennsylvania.

Here was a case where the employer was grossly negligent and was also violating an act of Congress, yet because the poor brakeman, while laboring under these extraordinary disadvantages, happened to raise his head a little too high the employer is released from liability.

Should a brakeman refuse to work under these conditions he would in all probability be discharged.

Other examples could be cited to show the injustice of this rule.

ENGLAND.

The English compensation act of 1897 makes the master liable unless the injury is attributable to the serious and willful misconduct of the workman himself. And while the doctrine of contributory negligence is not entirely abolished, the burden of proof is shifted to the employer.

GERMANY.

The German compensation law makes the master liable even though the injury is brought about by the workman himself, the only exception being when the accident was intentionally brought about by the workman.

ITALY.

The Italian law requires every accident to be compensated, but authorizes legal proceedings to secure reimbursement from a workman guilty of willful misconduct.

FRANCE.

Under the French law the doctrine of contributory negligence does not operate wholly to defeat the workman, but only serves to reduce the amount of damages he shall receive, the amount being reduced according to the degree of his negligence, and if the accident was caused by the inexcusable neglect of the employer or his representatives it may be increased within certain limits.

SWITZERLAND.

The Swiss law provides that if the injured person was partially at fault the damages to be paid are to be correspondingly reduced, and the burden of proof is put upon the employer.

RUSSIA.

Under the Russian law contributory negligence does not bar a recovery, but only serves to diminish the amount of indemnity, and the burden of proof is put upon the employer.

This shows that six foreign states have recognized the justice of the doctrine of comparative negligence.

Now, as to the recognition of this doctrine in our own country, I will read from page 181 of a book issued by the State of Pennsylvania in 1901 and entitled "The legal relations between the employed and their employers in Pennsylvania compared with the relations existing between them in other States:"

Some States have attempted to establish another rule that merits consideration. It is an attempt to measure or compare the negligence on both sides, and then award judgment in favor of the least culpable. This doctrine has been scouted at in Pennsylvania, but it has been adopted in Illinois and Georgia and is gaining ground. Such a strong principle of justice underlies it that it commends itself to many.

I also read from the same page:

Let us then turn to this rule of measuring the negligence of both parties. In Jacob's case Justice Breeze, after reviewing many cases, concludes thus:

"It will be seen from the cases that the question of liability does not depend absolutely on the absence of all negligence on the part of the plaintiff, but upon the relative degree of care or want of care, as manifested by both parties, for all care or negligence is at best but relative, the absence of the highest possible degree of care showing the presence of some negligence, slight as it may be. The true doctrine, therefore, we think, is that in proportion to the negligence of the defendant should be measured the degree of care required of the plaintiff—that is to say, the more gross the negligence manifested by the defendant the less degree of care will be required of the plaintiff to enable him to recover."

This doctrine, thus announced in Illinois in 1858, has often been reaffirmed by the courts of that State. In a later case Justice Scott remarked:

"Formerly it was the rule if the negligence of the plaintiff contributed to the injury, however slight, it would bar the action. This rule has been modified by more recent decisions, and it is now the settled law that the plaintiff may recover, notwithstanding he may have been guilty of contributory negligence, if his negligence is slight and that of the defendant is gross. It is an essential element to the right of action in all cases, the plaintiff or party injured must himself exercise ordinary care, such as a reasonably prudent man will always adopt for the security of his person or property."

And in a still more recent adjudication the cases were elaborately reviewed by Justice Scolfield, and the rule was applied. This rule also prevails in Georgia.

MARYLAND.

Chapter 139 of the Maryland Laws of 1902 provides that—

If it appears that such injury or death was caused by the joint negligence of such employer, his servants, or employees, on the one hand, and the negligence of the injured or deceased, on the other hand, then the employer shall be liable for one-half of the damages sustained by such injury or death.

NEW YORK.

Chapter 600 of the New York Laws of 1902 says:

The fact that the employee continued in the service of the employer in the same place and course of employment after the discovery by such employee, or

after he had been informed, of the danger of personal injury therefrom shall not, as a matter of law, be considered as an assent by such employee to the existence or continuance of such risks of personal injury therefrom, or as negligence contributing to such injury.

We think this doctrine is fair, and if adopted by Congress will not only give the employee greater rights in the courts, but will also lessen the number of accidents, for if railroad companies are held to account for their gross negligence where heretofore they have been allowed to go free, it will cause them to throw greater safeguards around the lives and limbs of their employees.

In the course of his remarks on the English compensation act in the House of Lords on July 20, 1897, Lord Salisbury said:

To my mind the great attraction of this bill is that I believe it will turn out a great machinery for the saving of life. This is the real history of this law of compensation. The law of compensation at the beginning of the century was taken up by the juries, and instead of compensation for the real injury incurred being given it was used by them as a punitive instrument to force these great owners and railway companies to strain their efforts to the utmost in avoiding and preventing the accidents which at one time were so numerous. It has been very successful as far as regards the ordinary passenger or ordinary citizen, but the law of common employment has damaged its efficacy as regards the workingman. (Hansard, Parliamentary Debates, 1897, vol. 51, p. 555.)

Section 3.

The object of section 3 of this bill is to prevent the master from releasing himself from his liability under sections 1 and 2 through contracts of employment and insurance. Unless this be done the object of this whole legislation would fall flat, for the reason that the railroad companies before employing a man would make him sign a contract agreeing to relieve them from liability for injury.

Train baggage masters, in addition to their regular duties performed for railroad companies, are also often required to handle express, and the following is a sample of the release contracts which they are required to sign:

Application for situation with American Express Company—Rules governing employment by this company.

ACCIDENT RELEASE.

Whereas I, the undersigned, have entered, or am about to enter, the employment of the American Express Company, and in the course of such employment may be required to render services in the care, carriage, or handling of merchandise and property in course of transportation by cars, vessels, and vehicles belonging to the different railroad, stage, and steamboat lines upon which the company relies for its means of forwarding property delivered to it to be forwarded;

And whereas such express company, under its contracts with many of the corporations and persons owning or operating such railroad, stage, and steamboat lines, is or may be obligated to indemnify and save harmless such corporations and persons from and against all claims for injuries sustained by its employees:

Now, therefore, in consideration of the premises and of my said employment, I do hereby assume all risk of accidents and injuries which I shall meet with or sustain in the course of my employment, whether occasioned or resulting by or from the gross or other negligence of any corporation or person engaged in any manner in operating any railroad or vessel, or vehicle, or of any employee

of any such corporation or person, or otherwise, and whether resulting in my death or otherwise.

And I do hereby agree to indemnify and save harmless the American Express Company of and from any and all claims which may be made against it at any time by any corporation or person under any agreement which it has made or may hereafter make, arising out of any claim or recovery upon my part, or the part of my representatives, for damages sustained by reason of my injury or death, whether such injury or death result from the gross negligence of any person or corporation, or of any employee of any person or corporation, or otherwise.

And I hereby bind myself, my heirs, executors, and administrators with the payment to such express company, upon demand, of any sum which it may be compelled to pay in consequence of any such claim, or in defending the same, including all counsel fees and expenses of litigation connected therewith.

I do further agree that in case I shall at any time suffer any such injury, I will at once, without demand, and at my own expense, execute and deliver to the corporation or persons owning or operating the railroad, stage, or steamboat line upon which I shall be so injured a good and sufficient release, under my hand and seal, of all claims, demands, and causes of action raising out of such injury, or connected with or resulting therefrom.

I do hereby ratify all agreements heretofore made by said express company with any corporation or persons operating any railroad, stage, and steamboat line in which such express company has agreed in substance that its employees shall have no cause of action for injuries sustained in the course of their employment upon the line of such contracting party, and I agree to be bound by each and every of such agreements in so far as the provisions thereof relative to injuries sustained by employees of the company are concerned, as fully as if I were a party thereto.

And I do hereby authorize and empower said express company, at any time while I shall remain in its service, to contract for me and in my behalf, in its own name or in mine, with any corporations or persons operating any railroad, stage, or steamboat line, for my transportation as a messenger or employee free of charge, upon the condition and consideration that neither I nor my personal representatives, nor any person claiming under me, will make any claim for compensation because of any injury sustained by me, whether resulting from the gross negligence of such corporations or persons, or of any employee of such corporations or persons, or otherwise, and the contracts so made shall be as binding and obligatory upon me as if signed and delivered by me.

And I do hereby further agree that the provisions of this agreement shall be held to inure to the benefit of any and every corporation and of all persons upon whose railroad, stage, or steamboat lines the American Express Company shall forward merchandise, as fully and completely as if made directly with such corporations or persons.

I do further agree, in consideration of my employment by said American Express Company, that I will assume all risks of accident or injury which I shall meet with or sustain in the course of such employment, whether occasioned by the negligence of said company, or any of its members, officers, agents, or employees, or otherwise; and that in case I shall at any time suffer any such injury I will at once execute and deliver to said company a good and sufficient release, under my hand and seal, of all claims, demands, and causes of action arising out of such injury or connected therewith, or resulting therefrom; and I hereby bind myself, my heirs, executors, and administrators with the payment to said express company, on demand, of any sum which it may be compelled to pay in consequence of any such claim, or in defending the same, including all counsel fees and expenses of litigation connected therewith.

Witness my hand and seal this —— day of ———, one thousand ———.

[Sign name in full] ——— ———.

——— ———.

NOTE.—If applicant is under age his guardian must also sign this release.

———— ————, *Parent or Guardian.*

In presence of—

The following are extracts from an employment contract prescribed by one of the largest railroads in the country:

[Form 1692 special.]

Santa Fe.

G. C. & S. F. Ry. Co.
B. W. & T. Co.

G. B. & K. C. Ry. Co.
G. B. & G. N. Ry. Co.

APPLICATION FOR SITUATION.

On and contract of employment with [insert name of railway or railroad].

Instructions.—All applications for employment as train despatcher, clerk, telegraph operator, station agent, cashier, student, station baggageman, watchman or special police, conductor, brakeman, train baggageman, train porter, locomotive engineman, locomotive fireman, switchman, steam shovel engineer and fireman, pile driving engineer and fireman, steam shovel cranesman, hostler, car inspector, B. and B. and track foreman, r. h. foreman, carpenter, lineman, call boy, office boy, messenger, yardmaster, draughtsman, towerman, timekeeper, storekeeper, pumper, pump repairer, fuel foreman, assistant civil engineer, transitman, levelman, accountant, stenographer, special agent, stationary engineer, collector at station, machine shop employé (except common laborer), car shop employé, car repairer, paint shop employé (except common laborer), boiler shop employé (except common laborer), brass foundry employé (except common laborer), tin and copper shop employé (except common laborer), and such other employés as may be designated by the superintendent or mechanical superintendent, must be made by the applicant himself, in triplicate on this blank, and sworn to before a notary public, one copy to be retained by applicant.

* * * * * * *

30. Do you understand that this company does not block frogs, guard rails, or switches, and do you agree to assume the risks therefrom? ——— ———.

* * * * * * *

32. Do you understand that every employé of this company whose duties are in any way prescribed by the rules must always have a copy of the rules at hand when on duty, and must be conversant with every rule, and that you must render all the assistance in your power in carrying them out, and immediately report any infringement of them to the head of your department, and do you agree that such rules, including any changes therein or additions thereto from time to time, shall be a part of this, your contract of employment? ——— ———.

* * * * * * *

34. Do you know that on or along this railway there are platforms, sheds, roofs, water and oil tank frames, water and oil spouts, coal chutes and bins, oil racks, mail cranes, switch stands, buildings, bridges, track scales, cars and engines on main or side tracks, and other overhead and side obstructions, near the track and near side and spur tracks, which are dangerous, particularly while you may be on the side or top of cars, engines, or tenders, or on the ground near same, and do you agree to inform yourself as to the particular location thereof on the section or sections, division or divisions of the road, yards, and stations, where you may work, and to use due care to avoid injury thereby, and to assume all risk of injury therefrom, and acknowledge that you have actual notice thereof? ——— ———.

35. Do you know that it is dangerous to stand erect upon cars, and especially cars above average height, while passing over, through, or under bridges or viaducts at which there are no telltales or other warnings, as follows:

MAIN LINE.

Bridge No.	Between mile posts—	Name.
55	48 and 49	Brazos River.
Viaduct.	128 and 129	
Viaduct.	130 and 131	
305	186 and 186	Little River.
C 124	207 and 208	Brazos River.
	345 and 346	Viaduct, Fort Worth.
C 217	348 and 349	Trinity River.
C 237	365 and 366	Lizabeth Creek.
C 246	371 and 372	Oliver Creek.
C 259	380 and 381	South Hickory Creek.
C 261	382 and 383	North Hickory Creek.
C 268	389 and 390	Clear Creek.
C 278	398 and 399	Spring Creek.
C 290	408 and 409	Elm Creek.
Viaduct.	290 and 291	
C 302	418 and 419	Red River.
C 344	440 and 441	Big Hickory.
C 395	456 and 457	Caddo Creek.
C 411	468 and 469	Rock Creek.
C 427	478 and 479	Chigley Sandy Creek.
C 436	485 plus 2	Kickapoo Creek.
C 441	490 plus 24	2d Washita.
C 450	497 plus 3	3d Washita.

DALLAS BRANCH.

	330 and 331	Viaduct, Alvarado.
6111	368 and 369	Trinity River.
Viaduct.	372 and 373	
6119	374 and 375	White Rock Creek.
6129	382 and 383	Duck Creek.
6134	387 and 388	Rowlet Creek.
6145	396 and 397	East Fork Trinity River
	409 and 410	Viaduct, Farmersville.
6227	451 and 452	North Sulphur Creek.

HONEY GROVE BRANCH.

	440 and 441	Viaduct, Ladonia.
7005	441 and 442	North Sulphur Creek.

HOUSTON BRANCH.

A 19	53 and 54	Buffalo Bayou.

BEAUMONT DIVISION.

B 34	156 and 157	Brazos River.
B 57	167 and 168	Navasota River.
	231 and 232	Trinity River.
	287 and 288	Village Creek.

LAMPASAS BRANCH.

8013	224 and 225	Leon River
	225 and 229	Viaduct, Belton
8091	264 and 265	Lampasas River
8109	272 and 273	First Sulphur Creek
8110	272 and 273	Second Sulphur Creek.
8217	332 and 333	Bankot Creek
8248	345 and 346	Pecan Bayou.
8258	409 and 410	Elm Creek
8280	411 and 412	Colorado River.

And do you agree to assume the risk therefrom, and from such other bridges, viaducts, or other overhead obstructions which may be noted from time to time on the time card, and do you acknowledge actual notice of all of the same, and that in some of said overhead bridges some of the overhead braces are lower than others? ——— ———.

36. Do you realize that railroading is a dangerous business, and requires a corresponding degree of diligence to avoid injury to person and property, and that you owe a moral as well as legal duty to your employer, your fellow-employees, and to the public to use every reasonable effort, including your eyes, your ears, and your thoughts, to avoid injury to person and property? ——— ———. Do you agree that you will do so? ——— ———. Do you agree that you will observe, as far as practicable, all conditions or things that are liable to cause injury, and report the same in writing to your superior officers? ——— ———.

Do you agree that you will not assume that anything is safe, and agree that, as far as you reasonably can, you will, for your own safety, before you make use of or expose yourself on or with the same, examine the condition of all machinery, tools, tracks, switches, cars, engines, and all the appliances thereto, or whatever you may undertake to work upon or with, and to inspect your surroundings and everything to be used by you or connected with or incident to your work, and use your best efforts to avoid injury therefrom to yourself and others? ——— ———.

Do you understand that it is expressly agreed by the company that it is your right and duty, under all circumstances, to take sufficient time before exposing yourself, to make such examinations as you have here agreed to, and to refuse to obey any order which would expose you to danger? ——— ———.

37. Do you understand that if you are injured in any manner while in the service of this company, that you will not be allowed to return to the service of the said company, in any capacity, until you have executed a release or made satisfactory settlement with the proper officer? ——— ———. * * *

39. Do you understand that this company does not have all its main tracks, side, and spur tracks ballasted or surfaced, and that the tracks are liable to have slivers on the rail, and that there are open and surface cattle guards and open culverts in the main tracks and in side and spur tracks, of all of which you accept notice and agree to particularly advise yourself thereof and to assume the risk therefrom? ——— ———.

40. Do you understand and agree that no officer or employee of this company is authorized to request or require you to use defective tracks, cars, machinery, or appliances of any kind, except at your own risk of injury therefrom? ——— ———.

41. Do you understand that this company desires to employ only experienced men in its service, and do you state that you are aware of the hazards and dangers of the business, and agree to rely upon your coemployees, and not upon the company, for information as to any or all things, including the character of any kinds of machinery and appliances which would render your work dangerous or subject you to injury, or which may be necessary to the proper performance of your duty; and do you waive any responsibility whatever on the part of the company or its officers touching the matters herein referred to, and that this shall apply to any position to which you may now or hereafter be assigned? ——— ———.

42. Do you agree that whenever you shall sustain any personal injury while in the service of this company you will allow its surgeons and any medical examiners it may select to examine your person and body as often as this company may desire in respect to the alleged injury, and hereby waive all objections to such surgeons or medical examiners testifying whenever called upon by this company; and do you further agree that your refusal to allow any such examination or testimony shall be a bar to the institution or prosecution of any action on account of such injury or injuries, and that any action pending at the time of such refusal shall at once abate in consequence thereof? ——— ———.

43. Do you agree that if while in the service of this company you sustain any personal injury you will give notice in writing within ninety-one days thereafter of such claim to the general claim agent, or to the nearest or any other convenient local agent of the company, which notice shall state the time, place, and particulars of the injuries, and the nature and extent thereof and the claim made therefor, to the end that such claim may be fully, fairly, and promptly investigated, and that your failure to give written notice of such

claim, in the manner and within the time aforesaid, shall be a bar to the institution of any suit on account of such injuries? ——— ———.

44. Should you enter the service of this company pending the approval of your application, and said application be not approved, do you agree to be removed from the service at once, but that at all times while in the service this shall constitute a contract of employment; and do you agree that your employment for any time, however short, or if you are already employed, that your continuance in this company's employment for any time, however short, shall be a legal and adequate consideration for the execution of this contract, and that if your failure to perform or comply with any of the terms of this, your contract of employment, shall cause or contribute to your injury you will have no cause of action against this company, and hereby expressly waive the same? ——— ———.

——— ———, *Applicant.*

My present address is ——— ———.

Witness:

——— ———.

——— ———.

Dated at ——— ———, 190—.

STATE OF ——— ———,
County of ——— ———, *ss:*

——— ———, being first duly sworn, says on oath that he is the applicant named in the foregoing application; that said application is signed by him; that the answers to questions in said application are made in his own handwriting; that each and all of the answers contained in said application are true, and that he has carefully read said application and knows its contents, and that same will be his contract of employment, and that he has executed and will retain in his possession a duplicate thereof.

——— ———,
Applicant.

——— day of ——— ———, 190—.

[SEAL.]

——— ———,
Notary Public.

Such contracts of employment have been held valid by the United States Supreme Court. (See Voight *v.* B. and O. S. W. R. R., 176 U. S., p. 498.)

Our Federal courts have held, however, that these contracts can be declared void by statute. (See O'Brien *v.* C. and N. W. R. R. Co., Fed. Rep. Dig. Cols., 1464, 1476.)

GERMANY.

The German employer's liability act of 1871 provides that—

The employers designated in sections 1 and 2 of this act are not permitted to make any special contracts whereby the application of the preceding sections 1 to 3 of this act shall be abrogated or limited to the benefit of said employers.

Contracts contrary to the preceding paragraph have no legal validity.

DENMARK.

The insurance law of Denmark contains this provision:

Agreements between employers and workmen which tend to the nonobservance of the provisions of this law, or which provide for the payment on the part of the workman of the insurance premium, or of any fraction of the same, are null and void.

ITALY.

Section 12 of the Italian law reads as follows:

Every agreement designed to free the undertaker from the payment of compensation or to diminish the amount fixed by the provisions of section 9 is null and void.

SPAIN.

The Spanish law reads:

Every renunciation of the privileges granted under this act is null and void; likewise all agreements contrary to these provisions.

SWITZERLAND.

Section 12 of the Swiss law of 1875 reads as follows:

Regulations, notices, or special agreements, whereby the responsibility for damages under the provisions of this act are limited or abrogated, have no legal validity.

Several of our own States have declared these contracts void. The following are quotations from several of our State laws:

WISCONSIN.

"And no contract, rule, or regulation between any such corporation and any agent or servant shall impair or diminish such liability. No contract, receipt, rule, or regulation between any employee and a railroad company shall exempt such corporation from the full liability imposed by this act." (Wisconsin Acts, 1893, ch. 220.)

MISSISSIPPI.

"Any contract or agreement, express or implied, made by any employee to waive the benefit of this section shall be null and void." (Mississippi Constitution, sec. 193; also, Annotated Code, 1892, sec. 3559.)

TEXAS.

"No contract made between the employer and employee, based upon the contingency of death or injury of the employee, limiting the liability of the employer under this act, or fixing damages to be recovered, shall be valid and binding." (Texas Revised Statutes, 1895, sec. 4560.)

IOWA.

"And no contract which restricts such liability shall be legal or binding. Nor shall any contract of insurance, relief benefit, or indemnity in case of injury or death, entered into prior to the injury, between the person so injured and such corporation, nor shall the acceptance of any such insurance, relief benefit, or indemnity by the person injured, his widow, heirs, or legal representatives after the injury, from such corporation, person, or association constitute any bar or defense to any cause of action brought under the provision of this section; but nothing contained herein shall be construed to prevent or invalidate any settlement for damages between the parties subsequent to injuries received." (Iowa Code, 1897, sec. 2071.)

MINNESOTA.

"And no contract, rule, or regulation between such corporation and any agent or servant shall impair or diminish such liability." (Minnesota General Statutes, 1894, sec. 2701.)

FLORIDA.

"No contract which restricts such liability shall be legal or binding." (Florida Revised Statutes, 1892, sec. 3.)

VIRGINIA.

"Any contract or agreement, express or implied, made by any such employee to waive the benefit of this section, or any part thereof, shall be null and void." (Virginia Acts, 1901–2, ch. 322.)

ARKANSAS.

"No contract made between the employer and employee based upon the contingency of the injury or death of the employee limiting the liability of the employer under this act, or fixing damages to be recovered, shall be valid and binding." (Arkansas Digest, 1894, sec. 6250.)

SOUTH CAROLINA.

"Any contract or agreement, express or implied, made by any employee to waive the benefit of this section shall be null and void." (South Carolina Constitution, sec. 15.)

In 1903 the legislature passed the following act:

"From and after the approval of this act, when any railroad company has what is usually called a relief department for its employees, the members of which are required or permitted to pay some dues, fees, moneys, or compensation to be entitled to the benefits thereof, upon the death or injury of the employee, a member of such relief department, such railway company [shall] be, and is hereby, required to pay to the person entitled to same the amount it was agreed the employee or his heirs at law should receive from such relief department; the acceptance of which amount shall not operate to estop or in any way bar the right of such employee, or his personal representatives, from recovering damages of such railroad company for injury or death caused by the negligence of such company, its agents or servants, as now provided by law; and any contract or agreement to the contrary shall be ineffective for that purpose." (South Carolina Laws, 1903, act 46.)

MISSOURI.

"No contract made between any railroad corporation and any of its agents or servants, based upon the contingency of the injury or death of any agent or servant, limiting the liability of such railroad corporation for any damages under the provisions of this act, shall be valid or binding, but all such contracts or agreements shall be null and void." (Missouri Acts, 1897, sec. 4.)

NORTH CAROLINA.

"Any contract or agreement, express or implied, made by any employee of said company to waive the benefit of the aforesaid section shall be null and void." (North Carolina Acts, 1897, Vol. II, ch. 56, sec. 2.)

NORTH DAKOTA.

"And no contract, rule, or regulation between such corporation and any agent or servant shall impair or diminish such liability." (North Dakota Acts, 1899, ch. 129, sec. 1.)

MASSACHUSETTS.

" No person or corporation shall, by a special contract with persons in his or its employ, exempt himself or itself from any liability which he or it might be under to such person for injuries suffered by them in their employment and which result from the employer's own negligence or from the negligence of other persons in his or its employ." (Massachusetts Acts, 1894, ch. 508, sec. 6.)

Chapter 270 of the Massachusetts Acts of 1887, as amended by chapter 155 of the Acts of 1888, chapter 260 of the Acts of 1892, chapter 359 of the Acts of 1893, and chapter 499 of the Acts of 1894, also contains the following provision:

"Any employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries for which compensation may be recovered under this act, or to any relief society formed under chapter 244 of the acts of the year 1882, as authorized by chapter 125 of the acts of the year 1886, may prove, in mitigation of the damages recoverable by an employee under this act, such proportion of the pecuniary benefit which has been received by such employee from any such fund or society on account of such contribution of said employee as the contribution of such employer to such fund or society bears to the whole contribution thereto."

INDIANA.

"All contributions made by railroads or other corporations with their employees, or rules or regulations adopted by any corporation releasing or relieving it from liability to any employee having a right of action under the provisions of this act, are hereby declared null and void." (Indiana Annotated Statutes, 1894, sec. 7087.)

OREGON.

"Any contract or agreement, express or implied, made by any such employee to waive the benefit of this section, or any part thereof, shall be null and void." (Oregon act approved Feb. 10, 1903.)

NEW YORK.

"An employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries for which compensation may be recovered under this act, or to any relief society or benefit fund created under the laws of this State, may prove in mitigation of damages recoverable by an employee under this act such proportion of the pecuniary benefit which has been received by such employee from such fund or society on account of such contribution of employer as the contribution of such employer to such fund or society bears to the whole contribution thereto." (New York Laws, 1902, ch. 600.)

GEORGIA.

"All contracts between master and servant made in consideration of employment, whereby the master is exempted from liability to the servant arising from the negligence of the master or his servants, as such liability is now fixed by law, shall be null and void as against public policy." (Georgia Laws, 1895, sec. 1, act 184.)

NEW MEXICO.

"And any contract restricting such liability shall be deemed to be contrary to the public policy of this Territory, and therefore void." (New Mexico Compiled Laws, 1897, sec. 3216.)

ALABAMA.

Although the Alabama law contains nothing in regard to these contracts of employment, the supreme court of that State in 1890 decided that such contracts were opposed to public policy and did not secure to the railroad company, in whose interest the stipulation in the contract has been made, exemption from statutory liability.

KANSAS.

A similar decision was rendered by the supreme court of Kansas in 1893.

PORTO RICO.

"Any employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries for which compensation may be recovered under this act, or who has insured the said employee in any insurance company against the accidents of labor, shall be entitled to have deducted from the sum which he shall have to pay as compensation under the provisions of this act the amount that shall have been received by the person injured, or by his widow or children, or both of them, or by the parents, if there be no such widow and children, from the aforesaid fund or from the insurance company by reason of the same accident." (Porto Rico Revised Statutes, 1902, sec. 330.)

Congress has already legislated to some extent against these contracts of insurance. The national arbitration law of June 1, 1898, contains the following provision:

> That any employer subject to the provisions of this act, and any officer, agent, or receiver of such employer, who shall * * * require any employee, or any person seeking employment, as a condition of such employment, to enter into a contract whereby such employee or applicant for employment shall agree to contribute to any fund for charitable, social, or beneficial purposes; to release any employer from legal liability for any personal injury by reason of any benefit received from such fund beyond the proportion of the benefit arising from the employer's contribution to such fund * * * is hereby declared guilty of a misdemeanor, and, upon conviction thereof in any court of the United States of competent jurisdiction in the district in which such offense was committed, shall be punished for each offense by a fine of not less than one hundred dollars and not more than one thousand dollars.

It was hoped by the friends of this law that this would be sufficient protection against the relief departments which are operated by several railroad companies, but in this they were disappointed.

The United States Industrial Commission in its final report to Congress, under the head of "Recommendations," calls attention to this provision of the law and recommends further consideration of the subject.

I have here a copy of a statement which I made to the Industrial Commission, which contains some documentary evidence on this subject, including statements from the employees themselves, showing how they are taken advantage of through these relief departments, which I will gladly submit for the use of the committee if it so desires:

TESTIMONY OF H. R. FULLER BEFORE THE UNITED STATES INDUSTRIAL COMMISSION ON MAY 11, 1900.

Relief departments by railroads.—Some roads conduct relief departments, which are kept up principally by deductions from the wages of the employees each month. These associations are in name "voluntary," but in nature they are compulsory; that is, the old employees who do not belong to them are coerced or intimidated into joining them, and new applicants for employment are not hired unless they agree to become members of these associations. The employees have some voice in their management and are allowed a minority representation on the advisory boards, but the railroad companies in organizing these associations and making the laws to govern them have shrewdly seen to it that the companies' representation on the boards is in the majority, and can at all times dictate and dominate the policy of the association. They have taken good care, too, to see to it that the law-making power of the associations can never fall into the hands of the employees. As I have said, these associations are kept up mostly by monthly deductions from the wages of the employees, but the companies agree to make good any deficiency in the fund. As a condition of receiving benefits, an employee must release the company from responsibility for injury, because it agrees to make good any deficiency in this fund. As the figures of those who have investigated show that the amount paid in by the employees is sufficient to fully cover the cost of carrying their risks, and that the amount paid into such fund by the company is only between one-fifth and one-sixth of the total amount paid in, it is considered that it is taking a very unfair advantage of the employees to require them to release the company from responsibility for injury.

(For insurance rates, see Locomotive Engineers' Journal for September, 1896, pp. 784–789; for figures in regard to the amount contributed by railroad companies to relief funds, see evidence of J. K. Cowen in hearings before the Industrial Commission on transportation, p. 306.)

The effect of these associations on the relations between employer and employee is anything but pleasant. The employees have had their eyes opened in regard to these associations. They see that through the intricate workings of these relief departments they are being financially robbed and deprived of their legal rights in the courts, and they denounce them bitterly.

The primary motives of railroad companies in operating these departments are avaricious rather than benevolent. First, because they require an employee to release them from responsibility for injury, and, second, because membership in the relief department keeps employees out of labor organizations on account of their being unable to pay the dues in both. In this way the employees are deprived of the great benefit of labor organizations and the company's hands are therefore more free to impose unfavorable conditions upon its men, and through this means they will become gradually bound up so that the company can do as it pleases with them. If these relief departments did not serve the purposes of releasing the company from responsibility for injury and alienating the interest of employees from labor organizations, there would not be many of them in existence.

I have not had the time and means at my command to make as thorough an investigation of these departments as I would like to have done, but I have been able to gather enough evidence together to substantiate the charge that they are

founded on iniquity and governed by laws that are in direct conflict with the spirit of American institutions, and are foisted upon the employees in defiance of the laws of our country. So numerous are the flagrant abuses practiced by railroad companies through these relief departments upon their employees that I will not attempt to cover them all, but will try to point out to you those that have appeared to me to be the most unjust and open to criticism.

I wish first to call your attention to the blank applications for membership prescribed by three railroads which operate these associations:

BALTIMORE AND OHIO RAILROAD COMPANY—RELIEF DEPARTMENT.

Application for full membership in the relief feature.

To the Superintendent of the Relief Department:

I, ——— ———, of ———, in the county of ——— and State of ———, desiring to be employed in the service of the Baltimore and Ohio Railroad Company as ——— in the ——— department, ——— division, do hereby, as one of the conditions of such employment, apply for membership in the relief feature, and consent and agree to be bound by all the regulations of the relief department now in force and by any other regulations of said department hereafter adopted applicable to the relief feature; for which regulations now in force reference is hereby had to any copy of the last edition of the book of regulations of said department issued by the superintendent.

I also agree that the said company, by its proper agents, and in the manner provided in said regulations, shall apply monthly in advance from the first wages earned by me under said employment in each calendar month, sums at the rate of ——— per month as a contribution to the relief feature of said department, for the purpose of securing the benefits provided by said regulations for a member of class —— to myself, or in the event of my death to ———, or to whomever I may hereafter, from time to time, designate in writing by way of substitution, with the written consent of the superintendent; or if no such beneficiary be then living, to my next of kin (as determined by the laws of the State of Maryland), in accordance with regulation No. 18, subject to all the provisions and requirements of said regulations.

I expressly stipulate that my marriage shall ipso facto have the effect to substitute my wife in the place and stead of the beneficiary named above to receive said benefits, in the event of my death, if she be then living.

I further agree that this application when accepted by the superintendent shall constitute a contract between myself and the said company as a condition of my employment by the company, governed in its construction and effect by the laws of the State of Maryland, and as such be an irrevocable power and authority to said company to appropriate the above amounts from my wages and apply the same as aforesaid, and shall constitute an appropriation and assignment in advance to the said company in trust for the purpose of the relief feature, of ——— such portion of my wages, which assignment shall have precedence over any other assignment by me of my wages or of any claim upon them on account of liabilities incurred by me.

I further agree that in consideration of the contributions of said company to the relief department and of the guaranty by it of the payment of the benefits aforesaid, the acceptance of benefits from such relief feature for the injury or death shall operate as a release of all claims against said company or any company owning or operating its branches or divisions or any company over whose railroad, right of way, or property the said Baltimore and Ohio Railroad Company or any company owning or operating its branches or divisions shall have the right to run or operate its engines or cars or send its employees in the performance of their duty, for damages by reason of such injury or death which could be made by or through me; and that the superintendent may require as a condition precedent to the payment of such benefits, that all acts by him deemed appropriate or necessary to effect the full release and discharge of the said companies from all such claims be done by those who might bring suit for damages by reason of such injury or death; and also that the bringing of such a suit by me, my beneficiary or legal representative, or for the use of my beneficiary alone or with others, or the payment by any of the companies aforesaid of damages for such injury or death recovered in any suit or determined by a compromise or any costs incurred therein, shall operate as a release in full to the relief department of all claims by reason of membership therein.

I also agree for myself and those claiming through me to be specially bound by regulation No. 11, providing for the final and conclusive settlement of all disputes by reference to the superintendent of the relief department and an appeal from his decision to the committee on the relief department.

I understand and agree that this application when accepted by the superintendent shall constitute a contract between me and the said company, by which my rights as a member of the relief feature and as an employee of said company shall be determined as to all matters within its scope; that each of the statements herein contained and each of my answers to the questions asked by the medical examiner and hereto annexed shall constitute a warranty by me, the truth whereof shall be a condition of payment of the benefits aforesaid.

I hereby certify that I am —— years of age; am correct and temperate in my habits, and have no injury or disease, constitutional or other, which will tend to shorten my life; am now in good health, and able to earn a livelihood.

In witness whereof I have signed these presents at ———, in the State of ———, this day of ———, 18—.

Witness: ——— ———.

The foregoing application is accepted at the office of the superintendent of the relief department, in Baltimore City, Md., this —— day of ———, 18—.

——— ———.

Superintendent of the Relief Department.

PENNSYLVANIA RAILROAD COMPANY—RELIEF DEPARTMENT.

Application for membership in the relief fund.

To the Superintendent of the Relief Department:

I, ——— ———, of ———, in the county of ——— and State of ———, employed in the service of the Pennsylvania Railroad Company, as ——— upon the ——— department, ——— do hereby, by reason of such employment, apply for membership in the relief fund, and consent and agree to be bound by the regulations of the relief department of the said company as contained in the book of said regulations, approved by the board of directors, which I have read or have had read to me, and by any other regulations of the said department hereafter adopted, and by the provisions of any agreement or agreements made by the said company with any other corporation or corporations associating in adminstration of their respective relief departments, in accordance with said book of regulations.

I also agree that the said company, by its proper agents, and in the manner provided in said regulations, shall apply as a voluntary contribution from any wages earned by me under said employment, or from benefits that may hereafter become payable to me, at the rate of —— per month, for the purpose of securing the benefits provided for in the regulations for a member of the relief fund of the —— class, and additional death benefit, equal to ——— the death benefit of the first class. Unless I shall otherwise designate in writing, with the approval of the superintendent of the relief department, death benefit shall be payable to ——— ——— (here designate the beneficiary or beneficiaries).

And if any person now or hereafter designated by me to receive the death benefit shall not be living or shall be incapacitated for executing the requisite receipt and release, or if there shall be no such person, the death benefit shall be payable as provided in the regulations of the relief department for such event. And I agree that the acceptance of benefits from the said relief fund for injury or death shall operate as a release of all claims for damages against said company arising from such injury or death which could be made by or through me, and that I or my legal representatives will execute such further instrument as may be necessary formally to evidence such acquittance.

I also agree that this application, when approved by the superintendent of the relief department, shall make me a member of the relief fund on and from the date upon which, by the provisions of the regulations and the terms of this application, it takes effect, and shall constitute a contract between myself and the said company, and that the terms of this application and the regulations of said department shall, during my membership, be a part of the conditions of my employment by the company, and that the same shall not be avoided by any change in the character of my service, or locality where rendered while in such employment, nor by any change in the amounts applicable from my wages to the relief fund which I may hereafter consent to, and that the agreement that the above-named amounts shall be appropriated from my wages shall apply also to any other amounts arising from changes made as aforesaid, and shall constitute an appropriation and assignment in advance to the said company, in trust, for

the purposes of the relief fund, of such portions of my wages, which assignment shall have precedence over any other assignment by me of my wages, or of any claim upon them on account of liabilities incurred by me.

I also agree, for myself and those claiming through me, to be especially bound by regulation numbered 65, providing for final and conclusive settlement of all disputes by reference to the superintendent of the relief department and an appeal from his decision to the advisory committee.

I certify that I am correct and temperate in my habits; that so far as I am aware I have no injury or disease, constitutional or otherwise, which will tend to shorten my life, and am now in good health and able to earn a livelihood.

I also agree that any untrue or fraudulent statement made by me to the medical examiner, or any concealment of facts in this application, or resignation from the service of the said company, or my being relieved from employment and pay therein at the pleasure of the company or its proper officers, shall forfeit my membership in the aforesaid relief fund and all benefits, rights, or equities arising therefrom, excepting that my leaving the service shall not (in the absence of any of the other foregoing causes of forfeiture) deprive me of any benefits to the payment of which I shall have previously become entitled by reason of accident or sickness occurring while in the serivce.

This application to take effect the —— day of ———, A. D. ——, if I shall be on duty on that date; otherwise upon the date of my going on duty thereafter.

In witness whereof I have signed these presents at ———, in the county of ———, State of ———, this —— day of ———, A. D. ——.

Witness: (Signature) ——— ———.

The foregoing application is approved at the office of the superintendent of the relief department, at ———, in the county of ———, State of ———, this —— day of ———, A. D. ——.

(Signature) ——— ———.
Superintendent of the Relief Department.

Application for membership in the Philadelphia and Reading Relief Association.

To the Superintendent of the Philadelphia and Reading Relief Association:

I, ——— ———, of ———, in the county of ———, and State of ———, employed, or about to be employed, in the service of the ——— Company as ——— the ——— do hereby, by reason of such employment, apply for membership in the Philadelphia and Reading Relief Association, and consent and agree to be bound by the regulations of said association, as contained in the book of said regulations, approved by the advisory committee, which I have read or have had read to me, and by any other regulations of the said association which may be hereafter adopted.

I also agree that the said company, my employer, or any other company whose employees may become members of the said association, and which may hereafter employ me, shall, by its or their proper agents, and in the manner provided in said regulations, apply as a voluntary contribution from any wages earned by me under such employment, or from benefits that may hereafter become payable to me, at the rate of ——— ($———) per month, for the purpose of securing the benefits provided for in the regulations for a member of the said association of the —— class, and additional death benefit equal to ——— the death benefit of the first class. Unless I shall otherwise designate in writing, with the approval of the superintendent of the relief association, death benefit shall be payable to ——— ———. [Here designate the beneficiary or beneficiaries.]

And if any person now or hereafter designated by me to receive the death benefit shall not be living at the time of my death, or shall be incapacitated for executing the requisite receipt and release, or if there shall be no such person, the death benefit shall be payable as provided in the regulations of the association for such event. Any funeral or other expenses incident to my death which shall have been paid by the superintendent of the relief association in accordance with the regulations, shall be held to be in part payment of the said death benefit, and the amount so paid shall be deducted from the total amount of said death benefit before payment to the person or persons entitled to receive the same. And, in consideration of the contribution to be made to the relief fund of the said association by the Philadelphia and Reading Railroad Company, and its successors, and of the agreement of the several associated companies in respect of any deficit in the relief fund for benefits to their respective employees, I hereby agree that the acceptance of benefits from the said relief fund, or from said association, for injury or death, shall operate as a release of all claims for damages against said company, my employer, and against any of said associated companies by which I may hereafter be employed, arising from

such injury or death, which could be made by or through me, and that I or my legal representative will execute or, where necessary, procure to be executed, such further instrument as may be necessary formally to evidence such acquittance.

I also agree that this application, when approved by the superintendent of said association, shall make me a member of said association on and from the date upon which, by the provisions of the regulations of said association and the terms of this application, it takes effect, and shall constitute a contract between myself and said company, my employer, and such of the associated companies by which I may be hereafter employed, and that the terms of this application and the regulations of said association shall, during my membership, be a part of the conditions of my employment by said companies, or any of them, and that the same shall not be avoided by any change in the character of my service, or locality where rendered, while in such employment, nor by any change in the amounts applicable from my wages to the relief fund which I may hereafter consent to, and that the agreement that the above-named amounts shall be appropriated from my wages shall apply also to any other amounts arising from changes made as aforesaid, and shall constitute an appropriation and assignment in advance, to the said company or companies, my employers, in trust, for the purposes of said association, of such portion of my wages, which assignment shall have precedence over any other assignment by me of my wages or of any claim upon them on account of liabilities incurred by me.

I also agree for myself and those claiming through me to be especially bound by the regulations providing for final and conclusive settlement of all disputes by reference to the superintendent of said association and an appeal from his decision to the advisory committee.

I certify that I am correct and temperate in my habits; that, so far as I am aware, I have no injury or disease, constitutional or otherwise, which will tend to shorten my life, and am now in good health and able to earn a livelihood.

I do hereby further acknowledge, consent, and agree that any untrue or fraudulent statements made by me to the medical examiner, or any concealment of facts in this application, or my resignation from the service of said company, my employer, or from any of the associated companies, or my being relieved from employment and pay therein at the pleasure of the said companies, or any of them, or their proper officers, shall, except as otherwise provided in the regulations, forfeit my membership in the said association, and all benefits, rights, and equities arising therefrom, excepting that my leaving the service shall not (in the absence of any of the other foregoing causes of forfeiture) deprive me of any benefits to the payment of which I shall have previously become entitled by reason of accident or sickness occurring while in the service.

This application shall take effect on the —— day of ———, A. D. ——, if on that date I shall be on duty in the service of the said company; otherwise upon the date of my going on duty in such service, and am not at the time suffering from injury or disease.

In witness whereof I have signed these presents at ———, in the county of ———, State of ———, this ——day of ———, A. D. ——.

——— ———,
Signature of applicant.

Witness: ——— ———.

——— ———,
Signature of parent, guardian, or husband.

Witness: ——— ———,
Witness to signature of parent, etc.

The foregoing application is approved at the office of the superintendent of the Philadelphia and Reading Relief Association at Philadelphia, Pa., this —— day of ———, A. D. ——.

——— ———,
Superintendent of the Philadelphia and Reading Relief Association.

It is claimed by some of the defenders of these departments that membership in them is "strictly voluntary." This argument is denied by the employees and others who have investigated the subject, and so convincing are the facts to the contrary that the argument is not taken seriously by those who have become acquainted with the inside workings; but fearing the same old argument might be presented to this Commission I will point out a few of the facts which to my mind clearly prove the fallacy of the contention. In a table which I will submit later I will show that a large majority of the employees who have spoken on the matter say that it is necessary to join the relief

departments to secure employment, or that they are intimidated or coerced into joining them after securing employment. Prof. E. R. Johnson, of the University of Pennsylvania, who made an investigation of these departments, in his evidence before this Commission said:

* * * "A prominent official of an important railway corporation told me in a confidential conversation that he did not care whether the membership in relief association was compulsory or not. At that time his railway made membership in his association compulsory; but he stated that he did not care whether it was compulsory to join the association or not, for the reason that the indirect pressure that the corporation could bring to bear would accomplish the same result."

After making this statement he was asked this question: "Did they force the employees?" To this question he answered: "Yes." (Hearings before the Industrial Commission on the subject of Transportation, p. 57.)

In the application for membership in the Baltimore and Ohio Relief Department, heretofore quoted, the following appears:

"I, ——— ———, of ———, in the county of ——— and State of ———, desiring to be employed in the service of the Baltimore and Ohio Railroad Company as ——— in the ——— department, ——— division, do hereby, as one of the conditions of such employment, apply for membership in the relief feature, and consent and agree to be bound by all the regulations of the relief department now in force and by any other regulations of said department hereafter adopted applicable to the relief feature."

When an employee is required to join the relief department as a condition of employment, is not membership in that department compulsory?

President C. P. Huntington, of the Southern Pacific Railway, in a circular issued February 15, 1900, establishing the relief department on that road, said: "Applicants for employment after March 1, 1900, must become members of the relief department before entering the company's service." (Railroad Trainmen's Journal for April, 1900, p. 335.)

I think this is sufficient evidence to prove to a reasonable mind that membership in these associations is not voluntary, and I would not encroach upon the Commission's time by submitting any further proof were it not for the fact that in the face of all the evidence that has been produced, I expect you will find some people who will still insist that membership is voluntary, so I wish to call your attention to the evidence of Hon. J. K. Cowen, president of the Baltimore and Ohio Railroad, before this Commission October 21, 1899:

In answer to a question by Senator Mallory, he said: "If a person comes into the service now he agrees to go into the relief department."

In answer to a question by Commissioner Farquhar, he said: "He can not get into the service without going into the relief department unless he is over age and for some special reason is relieved." (Hearings before the Industrial Commission on Transportation, p. 305.)

The next claim made for these departments is that the money received from the employees to keep up the fund is given in "voluntary contributions." If membership in these associations is compulsory it necessarily makes the payment of these moneys compulsory, and to prove the former is but to prove the latter. Therefore I think it almost a waste of time to say any more on that proposition, but it might be well to here call your attention to the straits these companies must have been in when making the laws to govern these departments to find words deceptive enough to answer their purposes but still look good on the outside.

That they were in a measure unsuccesful in this is shown by their making a new definition for the word "contributions." On page 21 of the regulations governing the Baltimore and Ohio Relief Department I find the following: "The word 'contribution,' wherever used in these regulations, refers to the sums paid into the treasury of the company on account of the relief feature, either by appropriation of wages earned or by deposits of cash for or by members."

On page 29 of the regulations governing the Pennsylvania Voluntary Relief Department I find it defined in this way: "The word 'contribution,' wherever used herein, shall be held to mean such portion of wages or benefits, or cash payments in lieu thereof, as a member shall have agreed in his application shall be applied for the purpose of securing to him the right to benefits from the relief fund."

On page 30 of the regulations governing the Philadelphia and Reading Relief Association I find it defined in these words: "The word 'contribution,' wherever used herein, shall be held to mean such portion of wages or benefits, or cash payments in lieu thereof, as a member shall have agreed in his application

shall be applied for the purpose of securing to him the right to benefits from the relief fund."

They first compel a man to join these associations and agree to allow them to keep a part of his wages each month, and then want to call it a contribution. If there was not an attempt at deception in this matter, why did they pick a word that required so much defining? I believe that the general understanding of the word contribution is to give of one's own free will, and I deny that these employees pay this money in that spirit. And while they may not have the means of education at their command that the railway managers have, they are well enough acquainted with the English language to know that white is not black and a thousand definitions will not make green mean yellow.

Now as to the objects or motives of railway managers in operating these departments. The companies claim that the object is benevolence. We dispute this, and claim, on the other hand, that their motives are avaricious.

What the companies would have us believe are their motives are printed in their regulations, and it might be well to quote them. On page 9 of the regulations governing the Pennsylvania Railroad Voluntary Relief Department, I find this declaration:

"The object of this department is the establishment and management of a fund to be known as 'The relief fund,' for the payment of definite amounts to employees contributing to the fund, who under the regulations shall be entitled thereto, when they are disabled by accident or sickness, and in the event of their death, to the relatives or beneficiaries specified in the applications of such employees."

On page 3 of the regulations governing the Philadelphia and Reading Relief Association, the purpose is stated in this language:

"The object of this association is the establishment and management of a fund to be known as 'The relief fund,' for the payment of definite amounts to members of the association, when, under the regulations thereof, they shall be entitled thereto by reason of disablement from accident, sickness, or other cause, and, in the event of their death, to their relatives or other beneficiaries specified in their applications for membership or thereafter designated in accordance with the said regulations."

On page 4 of the regulations governing the Baltimore and Ohio Relief Department, it is put briefly in this language:

"The relief feature will afford relief to its members entitled thereto when they are disabled by injury or sickness, and to their families in the event of their death."

But we are fully convinced that these luring promises are only for the purpose of throwing dust in the eyes of the employees, and that the primary objects of the railroad companies in operating these departments are to deprive the employees of the right to sue in case of injury, and to keep them out of labor organizations.

As I have said before, I think if these two things could not be accomplished there would not be many relief associations in existence. Taking the second question first, I will give you what I think are good reasons to base this claim on:

In the first place, many of the employees say that they believe one of the objects of the companies is to keep them out of labor organizations. They also testify that it serves this purpose, for men are sometimes unable to keep up the dues in the relief department and their labor organizations, and as it is compulsory on them to pay dues into the relief department they must withhold their membership from the labor organizations.

In 1889, shortly after these relief associations had been started, Mr. E. F. O'Shea, grand secretary and treasurer of the Brotherhood of Railroad Brakemen, in answer to questions submitted by the Department of Labor in regard to relief associations, said:

"Some of the principal lines have lately organized so-called relief associations for the ostensible purpose of 'caring for our dear employees,' but the real purpose is to undermine and ultimately to destroy the brotherhood and place the men entirely at the mercy of the corporations. The brakeman does not receive wages commensurate with the work he performs or the dangers he is compelled to undergo, hence he is unable to keep up his membership in more than one organization, and as a portion of his wages is retained each month for his membership in the relief fund he has no choice in the matter. A protest will result in discharge, and a discharge forfeits all moneys paid into the fund. The relief fund is a delusion and a snare, and many of the brakemen know it from bitter experience." (Fifth Annual Report of the Commissioner of Labor, p. 39.)

Prof. E. R. Johnson, in testifying before this commission, said: "A majority of railroad men could not afford to carry insurance in the relief departments and in the brotherhoods; both the relief departments rather worked against the beneficial departments of the brotherhoods." Further he was asked: "Did it lessen their allegiance to the brotherhood organization?" To this he answered: "Yes; and made it rather difficult for a man who was to be a member of the relief department to join the brotherhoods." (Hearings before the Industrial Commission on Transportation, p. 57.)

Now, as to the other motive that prompts these companies—that of depriving employees of the right to recover for injury:

Each of these companies, as will be noted by glancing over the applications for membership in the relief department, requires as a condition of receiving benefits from the fund that the employee shall release it from all claims for damages arising from such injury.

If the companies are prompted by a spirit of benevolence, why do they take such an unfair advantage of an injured employee? Is it benevolence to strip a cripple of the legal rights given him by the laws of the land? One of the strongest evidences that the greatest desire of railroad companies is to prevent the paying of damages is afforded by watching their actions in such matters, and I desire right here to call the Commission's attention to the attitude of some of our railway managers toward their employees who have been injured in the service and have sought redress in the courts—the way they discourage these employees and apparently use every means at their command to suppress the evidence and truth in these cases. For instance, a road is running from Pennsylvania into Ohio. The laws and courts of Ohio are considered by the employees to be more fair and equitable than those of Pennsylvania, and the employee of this road when he sues naturally goes to Ohio to enter suit, and the case is tried in Ohio. He has to depend on his fellow-employees, who are his witnesses, to go voluntarily into Ohio to give evidence, because, as I understand it, they can not be compelled to go from one State into another to give evidence in such cases. The officers of the road go to these witnesses and tell them that they do not have to go into Ohio to testify unless they want to, and they give them to understand that it is the company's desire that they do not go. These employees are talked to by their superior officers, from the train master up to the general superintendent, and are finally persuaded not to go. Then the only way left open for the injured employee to get their testimony is to go into Pennsylvania and take their depositions. The practice in taking these depositions is for the counsel on both sides to get together and mutually agree on a date on which they will go together and take the depositions. The counsel for the company advises the officers of the road what day they will come, and the company then goes to these witnesses whose testimony would be favorable to the employee and gets them to go to some place where they can not be found on the day the depositions are being taken.

It is made known to these witnesses, too, that they will lose nothing for the loss of time and expenses while evading the lawyers. Then, too, if a good witness for the plaintiff is on a run that takes him into Ohio, and they fear he will be subpœnaed some time while in Ohio, they will in some instances put him on another part of the road to work, so that he will not run into Ohio. These witnesses know and feel in their own hearts that they are doing a wrong to their fellow-employee, but the remonstrances, or at least the suasive talk of a general superintendent, who has probably never honored them with an audience before, is too much for their will power, and they finally bend. And in this way the poor employee who has been injured through some fault of the company is deprived of some of his best witnesses. I remember, however, of one case where a man was handled in this way, and he was taken to task for it by his lodge of our organization; and when he fully realized the way his fellow-workmen felt about it, he took courage and went and freely gave his testimony; and the plaintiff, who was a member of a sister organization, recovered several thousand dollars for the loss of a hand.

What I desired to bring out by the foregoing was to show the means railroad officers will resort to to save damage suits; and it strengthens my assertion that one of the main features of the relief departments is to prevent the collection of damages for injury, when the company is liable.

But no stronger evidence can be obtained, showing the objects of these relief associations, than to take some of the history of the actions of the companies toward legislation which sought to nullify these release contracts. A few years ago, when such legislation was proposed in the State of Iowa, the Chicago, Burlington and Quincy Railroad Company, which operates a relief department,

marshaled all of its forces and influence and resorted to some questionable means to defeat this measure.

The fight made by the railroad employees in Iowa aroused so much public sentiment against these departments in that part of the country that the Pennsylvania Company was very much disturbed lest their association would be stripped of its best feature by State legislation in that section of the country. So at the last session of the Indiana legislature it sought to legalize its relief department by statute and had its attorneys draft the following bill, which was introduced in the senate by a senator who was favorable to that corporation:

[Engrossed senate bill No. 335.]

A BILL for an act making it lawful for railroad companies owning or operating railroads in the State of Indiana, and for all other corporations, companies, firms, or persons employing labor in said State, to organize and maintain relief departments for the creation, maintenance, and management of relief funds for the payment of benefits to employees contributing to such funds when disabled by accident or sickness, and in the event of their death to their relatives or other beneficiaries, authorizing employees to agree to contribute, and to contribute voluntarily to such funds, providing that the expense and cost of managing, caring for, investing, and disbursing such funds shall be borne solely by said corporation, companies, firms, or persons; that they shall be liable for the safe-keeping thereof, and for any deficiency in said funds, providing for the acceptance of benefits from said funds by the members and their beneficiaries, and prescribing the effect of such acceptance, and matters relating thereto, and declaring an emergency.

SECTION 1. *Be it enacted by the general assembly of the State of Indiana*, That it shall be lawful for railroad companies owning or operating railroads in said State, and for all other corporations, companies, firms, or persons employing labor in said State to organize and maintain relief departments for the creation, maintenance, and management of relief funds for the payment of benefits in definite amounts to employees contributing to such funds when they are disabled by accident or sickness, and, in the event of their death, to the relatives or other beneficiaries of the decedent who may be specified in the application for membership of such employees.

SEC. 2. The employees of such companies, corporations, firms, and persons may agree to contribute and may contribute voluntarily to the creation and maintenance of such funds, but all the expense and cost of managing, caring for, investing, and disbursing such funds shall be borne solely by the companies, corporations, firms, and persons, and they shall be liable for their safe-keeping and for any deficiency in the funds to pay the benefits agreed upon.

SEC. 3. In case of personal injury to any employee or of his death while a member of any such relief department and entitled to benefits, he or his beneficiary named in the application for membership may accept the benefits from the relief fund in lieu and in bar of any damages resulting from such injury or death, and the acceptance of benefits from the relief fund to which such employee or his beneficiary is entitled by reason of membership in the relief department shall be a valid defense to any action for damages resulting from such injury or death, but nothing contained herein or in any contract of such employees shall operate to deprive him or his representatives of his or their right of action for damages resulting from such injury or death if such employee or his beneficiary does not accept the benefits from such relief fund.

SEC. 4. An emergency exists for the immediate taking effect of this act; therefore the same shall be in force from and after its passage.

The company worked hard for the passage of this measure and kept a number of its employees at Indianapolis trying to show the legislators the blessings of their so-called "voluntary relief department." The bill was referred to the committee on judiciary, which reported the bill with amendment, as follows:

"MR. PRESIDENT: Your committee on judiciary, to which was referred senate bill No. 335, introduced by Senator Hogate, has had the same under consideration and begs leave to report the same back to the senate with the recommendation that said bill be amended by adding to section 3 the following:

"Amend by adding to section 3 the following:

"'*Provided*, That there shall be paid to any employee or beneficiary any and all benefits to which he is entitled by reason of such membership for the period of 15 days after his injury, and the acceptance of such benefit shall not operate as a bar in a suit for damages on account of such injury; and any act done, or any release or contract executed, within 15 days of any injury received by any member of any such association, shall not be a bar to any suit for damages on account of said injury; and that when so amended said bill do pass.'

"J. D. EARLY, *Chairman*."

The amended report was concurred in February 17, 1899, and on February 24, 1899, the bill was called up by Senator Hogate, the man who introduced it, and

read a third time by sections. It was then again amended by striking out all of lines 11 and 12, after the word "death," in section 3. And then it was still further amended by striking out all of section 3.

This left a measure that was undeceptive and would have carried out every principle set forth in the Pennsylvania Company's declaration of purposes of its relief fund. But this kind of legislation was not what it was seeking; it was seeking to legalize these release contracts; and when these iniquitous provisions were stricken from the bill the senator who had introduced it, and, as I understand it, introduced it at the instance of the Pennsylvania Company, moved to strike out the enacting clause, which motion prevailed, and it killed the bill.

Mr. Chairman, I have taken particular pains to look up the history of this Indiana legislation in order to give you the exact facts. I placed myself in communication with the secretary of state of Indiana; also with the chairman of the legislative board of railroad employees of that State, who was in attendance at Indianapolis during that session of the legislature, and to substantiate my statements I submit their letters:

DEPARTMENT OF STATE,
INDIANAPOLIS, IND., *January 22, 1900.*

H. R. FULLER, *Washington, D. C.*

DEAR SIR: I herewith inclose to you a type-written copy of senate bill No. 335, introduced in the senate of the sixty-first general assembly. The original bill, with the amendments added thereto, had been ordered to engrossment, after which, on February 24, the enacting clause was stricken out, and therefore the bill was killed.

Very truly, yours, GEO. W. GONSER, *Deputy Secretary.*

I again wrote to the secretary of state for more details in regard to this bill and received the following letter:

INDIANAPOLIS, IND., *March 12, 1900.*

H. R. FULLER, *Washington, D. C.*

DEAR SIR: Replying to your favor of March 10, I beg to say that senate bill No. 335 was introduced into the general assembly by Hon. Enoch G. Hogate, a Republican senator. On February 24, 1899, the bill was called up by Mr. Hogate and read a third time by sections. Senator Minor, a Democrat, made the following motion:

"I move you that senate bill No. 335 be referred to a committee of one and amended by striking out all of lines 11 and 12 after the word 'death' in section 3," which motion prevailed.

Senator Morris Winfield, a Democrat from the district composed of Cass and Pulaski counties, made the following motion:

"I move you that senate bill No. 335 be amended by reference to a committee of one, its author, with instructions to strike out section 3," which motion prevailed, on a decision whereon 21 senators voted in the affirmative and 13 senators voted in the negative.

The bill as amended did not meet the approval of Senator Hogate, who thereupon moved to strike out the enacting clause, which motion prevailed. If there is any blame to be attached to either party for the defeat of this bill, it can only be attached to the Democratic party.

Very truly, yours,

UNION B. HUNT, *Secretary of State.*

The following is the statement made by Mr. B. L. Frederick, the chairman of the railroad employees' legislative board:

INDIANAPOLIS, IND., *May 16, 1899.*

H. R. FULLER, *McKees Rocks, Pa.*

DEAR SIR: Your letter of the 1st instant relative to the bill introduced at the last session of the general assembly of this State, making it lawful for railroad companies and other corporations to organize and maintain relief departments, received.

This bill, which was known as S. B. 336 and introduced by Senator Hogate, of Boone County, was, I understand, drawn up by Mr. Samuel O. Pickens, of this city, and the chief counsel for the Pittsburg, Cincinnati, Chicago and St. Louis Railway in this State. This company (Pittsburg, Cincinnati, Chicago and St. Louis Railway) kept 6 of their employees stationed at the state house during the entire session, working in the interest of this measure—they having a list showing the percentage of members and nonmembers on each division to show that the relief department as conducted by that company was purely voluntary and not compulsory. On 2 or 3 of these divisions the percentage of membership

was as low as 60 per cent, but upon investigation I find the majority of the employees on these divisions that have a low percentage are men who are past the prime of life and would be considered by other insurance companies as poor risks.

The bill met with great opposition from the representatives of the employees for this reason: That the acceptance of the benefits of the relief association was a valid defense for the company in a suit for damages.

When the bill came up for passage with the amendment attached all interest was lost, showing conclusively that the bill was introduced to have the relief departments act as a bar in a suit for damages.

Trusting you will find this information sufficient, I am, sir,

Very respectfully, yours, B. L. FREDERICK.

Chairman Indiana Legislative Board.

Subscribed and sworn to before me this 29th day of March, A. D. 1900.

[SEAL.] JOHN W. DONNELLY,

Notary Public in and for Cook County, Illinois.

Now, I wish to call your attention to the remarkable wording of the title of this bill. Note how lucidly it sets forth every provision of the bill except the release provision. That is covered by these harmless-appearing words: "and prescribing the effect of such acceptance, and matters relating thereto." Indeed, the language of the bill is almost a repetition of that in the title, with this one exception. If there was not an attempt to deceive, why did they not clearly express this provision in the title of the bill? If this release clause was fair, why were they afraid to set it forth in the title as they did the other provisions of the bill? Why did they not say in the title: "and the acceptance of benefits from the relief fund shall be a valid defense to any action for damages resulting from such injury or death?"

But this is not all the evidence that can be produced to show that the greatest object aimed at is to save damage suits. The employees are almost unanimous in that opinion. Prof. E. R. Johnson, whose testimony I have already referred to several times, speaks this way: "I think the corporations have organized the relief departments not from philanthrophy, but because it is good business." He further says: "I think the economic motive is the motive of the corporations." (Hearings before the Industrial Commission on transportation, pp. 58–59.)

President Cowen, of the Baltimore and Ohio Railroad Company, in his evidence before this Commission, said: "And practically the effect of the relief department has been to almost entirely wipe out litigation with employees on account of injuries; not entirely, but almost entirely. I think really it is quite a rare case now for us to have much trouble with our employees."

If we had no more evidence, would not this admission make absurd any pretension that the relief departments were not organized for the purpose of saving damage suits?

But it is argued by the friends of the relief associations that anything that will save litigation is commendable. To my mind this is a wrong conception. I will agree, however, that anything that will remove the cause for litigation is commendable. We should not allow the railroad companies to escape the responsibility for injury to their employees, and then they would take more precautions to protect the lives and limbs of their employees; and the result would be a decrease in the number of accidents, and consequently the cause for litigation would be lessened. This would be going to the root of the evil, which is the right way to go about it.

It is said by those who have investigated this question that the companies contribute only about 16 or 20 per cent of the relief funds, but still they claim the right to make an employee release them from responsibility for injury before they will allow him to draw benefits from this fund of which he and his fellow employees have contributed over 80 per cent. For the paltry sum which is the company's contribution to the benefits he draws, he is deprived of the legal rights given him by the laws of the land. To plainly show the real injustice of this part of the scheme I will draw an example of how it works with an employee who is injured and is entitled by law to recover for such injury: An employee who is a member of the relief department loses an arm. We would say that the courts would allow him $5,000 for this injury. We will now say that he receives $100 from the relief fund, $20 of which the company has contributed. For this $20 he surrenders his right to the $5,000 which he is entitled to according to law, and he is out the difference between $20 and $5,000, which is $4,980.

As previously stated, the companies have the majority on the governing boards, and therefore practically make the laws and dictate the policy of these associations; and it is impossible for the employees' representatives to change these laws to an equitable basis.

I ask the question: If the employees contribute 80 per cent of the funds why should they not have a majority representation? I would like to be shown another business institution that is run in such an arbitrary manner. Where if you please, could we find a railroad president or director who owns the controlling interest in a road who would allow it to be run by the minority stockholders?

I have often heard the phrase used, "the tail wagging the dog," but it never presented itself so strongly to me as it does in this feature of the relief departments.

The amounts paid in disability and death claims by these associations are not commensurate with the amounts paid in dues. The insurance departments of our brotherhoods, and even the old-line insurance companies, give better rates. I have not had the time myself to go into this feature of the question and give you the exact figures, but I have here a very able and carefully prepared comparison made by one of the editors of our organizations, which I submit, as follows:

THE PLANT SYSTEM—RELIEF AND HOSPITAL DEPARTMENT.

We alluded to the philanthropic pose of Superintendent Dunham, of the Plant System, in our August number, and stated therein that in forcing his relief and hospital scheme on the employees it was compelling them to share the company's losses without sharing in its profits.

We have before us the printed application for membership which is headed "Plant System relief and hospital department." This document is too long for space at our disposal in this issue, and we will use such quotations as will answer our purpose at this time and if found necessary will publish in full later. This document is addressed to the superintendent and chief surgeon, and reads (the name and place added):

"I, Richard Roe, of Brunswick, Ga., desiring to be employed in the service of the companies constituting the Plant System as engineer in the train department, do hereby, as one of the conditions of such employment, apply for membership in the relief and hospital department, and consent and agree to be bound by all regulations of the relief and hospital department now in force, and by any other regulations of said department hereafter adopted."

It will be readily seen that employment in any capacity depends upon the physical possibility of the applicant coming within the requirements of the medical examination, which is more searching than the examination of any old-line insurance company, as it covers not only physical conditions but eyesight, hearing, and color list. And it is safe to say that no man, however proficient in the business, or how badly he may need work or they need his services, can obtain it only through the one channel, the relief and hospital department, and not then if for any reason the superintendent or medical examiner does not want him to pass. The application further says:

"I also agree that the said companies, or either of them, by its or their proper agents and in the manner provided in said regulations, shall apply monthly in advance, from the first wages earned by me under said employment in each calendar month, sums at the rate of —— per month as a condition to the relief and hospital department for the purpose of securing the benefits provided by said regulations for a member of class —— to myself, or in the event of my death to ———.

"I expressly stipulate that my marriage shall ipso facto have the effect to substitute my wife in the place and stead of the beneficiary named above to receive said benefits in the event of my death, if she be then living.

"I further agree that this application, when accepted by the superintendent and chief surgeon, shall constitute a contract between myself and the said companies, and each of them, as a condition of my employment by the company, governed in its construction and effect by the laws of the State of Georgia, and as such be an irrevocable power and authority to said companies, or either of them, to appropriate the above amounts from my wages and apply the same as aforesaid, and shall constitute an appropriation and assignment in advance to the said companies, or either of them, in trust for the purposes of the relief and hospital department, of such portions of my wages, which assignment shall have

precedence over any other assignment by me of my wages, or of any claim upon them on account of liabilities incurred by me.

"I further agree that in consideration of the contributions of said companies to the relief and hospital department, and of the guaranty by them of the payments of the benefits aforesaid, the acceptance of benefits from the said relief and hospital department for injury or death shall operate as a release of all claims against said companies, and each of them, for damages by reason of such injury or death which could be made by or through me; and that the superintendent and chief surgeon may require, as a condition precedent to the payment of such benefits, that all acts by him deemed appropriate or necessary to effect the full release and discharge of said companies, and each of them, from all such claims, be done by those who might bring suit for damages by reason of such injury or death; and also that the bringing of such a suit by me, my beneficiary, or legal representative, or for the use of my beneficiary alone, or with others, or the payment by any of the companies aforesaid of damages for such injury or death, recovered in any suit or determined by compromise, or of any costs incurred therein, shall operate as a release in full to the relief and hospital department of all claims by reason of my membership therein.

"I also agree, for myself and those claiming through me, to be specially bound by regulation No. 13, providing for the final and conclusive settlement of all disputes by reference to the superintendent and chief surgeon of the relief and hospital department; and an appeal from his decision to the committee on the relief and hospital department.

I understand and agree that this application, when accepted by the superintendent and chief surgeon shall constitute a contract between me and the said companies, and each of them, by which my rights as a member of said relief and hospital department and as an employee of said companies, or either of them, shall be determined as to all matters within its scope, that each of the statements herein contained and each of my answers to the questions asked by the medical examiner, and hereto annexed, shall constitute a warranty by me, the truth whereof shall be a condition of payment of any of the benefits aforesaid."

It will be noted that the applicant agrees that the acceptance of his application creates a fixed and immutable condition of his employment. He also agrees to obtain a release, if requested, from all parties who might come within the scope of law for bringing a suit against the company, and that the bringing of a suit shall act as a positive release of the companies' liability to pay any part of the indemnity accruing from his monthly payments and membership in the relief and hospital department. He also agrees that his rights in the indemnity department and his position as an employee shall rest upon the truth of his answers to the medical examiner, and without qualifications. One might state what he believed to be absolutely true of his own physical condition and still be as wide of the truth as many of the students with M. D. attached to their names in making an examination. The applicant takes this risk all to himself, as he does all the other risks incident to his employment and insurance with this philanthropic company. We append below the fixed and immutable condition of employment of all classes of employees on the Plant System. In this exhibit they take pains to say, "Free medical and surgical attendance by company's surgeons to all members," and that members must insure in the class their salary calls for. We shall see later whether medical attendance is free to anyone but the Plant company.

The Plant System relief and hospital department, what it costs, and benefits to be derived.

Class according to salary per month.	A.—$35 or under.	B.—Over $35 and not more than $50.	C. Over $50 and not more than $75.	D.—Over $75 and not more than $100.	E.—More than $100.
Class according to employment.					
Cost per month:					
First class (those engaged in operating trains)	$1.25	$2.50	$3.50	$4.50	$5.50
Second class (not so engaged)	1.00	2.00	2.75	3.50	4.25

The Plant System relief and hospital department, what it costs, and benefits to be derived—Continued.

Class according to salary per month.	A.—$35 or under.	B.—Over $35 and not more than $50.	C.—Over $50 and not more than $75.	D.—Over $75 and not more than $100.	E.—More than $100.
First or second class.					
Benefits:					
For accidental injuries per day, not including Sundays—					
First 26 weeks	$0.50	$1.00	$1.50	$2.00	$2.50
After 26 weeks	.25	.50	.75	1.00	1.25
For sickness per day, not including first 6 working days or Sundays, for 52 weeks	.50	1.00	1.50	2.00	2.50
In event of death from—					
Accident	500.00	1,000.00	1,500.00	2,000.00	2,500.00
Natural causes	250.00	500.00	750.00	1,000.00	1,250.00

Free medical and surgical attendance by company's surgeons to all members. No charge will be made to members for care and treatment while in hospitals. For care of the families of members in company's hospitals, actual cost will be charged with an addition of 10 per cent.

Members employing other than the company's surgeons will do so at their own expense. Benefits will not be paid in such cases unless reported promptly on relief and hospital department Form 12.

Employees becoming members of the department must insure in the class their salary requires.

Now, the second class, not in train service, is necessarily made up of all the other classes that compose the necessary force employed; and as there are six classes listed in old-line companies before we come to hazardous, it will be fair to take the middle class, called ordinary, and turning to this column we find $1,000, and $7.50 weekly indemnity. Old-line company, 84¼ cents a month, or $10.12 a year; Plant System, $2 a month, or $24 a year; $1,500 old line, $7.50 weekly benefits, 94 cents a month, or $11.25 per year; Plant, same class, $2.75 per month, or $33 a year; $2,000 old line, $12 a week, $1.46 per month, or $17.52 per year; Plant, same class, $3.50 a month, or $42 per year; $2,500 old line, $12.50 per week, $1.56¼ a month, or $18.75 per year; Plant, same class, $4.25 per month, or $51 per year. In roads where hospital department only is maintained, the payments would, we think, not exceed $4.50, $6, $9, and $12 a year for these classes, and the Plant's excess charges over the old-line company is $13.88, $21.75, $24.48, and $32.25 a year—almost three times as much as the cost of hospital maintenance. This looks like a good big margin for the Plant System, and we will leave the reader to estimate whether the medical service is free or whether the employee pays the bill. And when we realize, as we all do, that a very small percentage of the above class get killed, and consequently the maturing claim by natural death being paid only one-half, we do not think the Plant System will be bankrupt by its philanthropy. Now we will make a comparison of the other class—"extra hazardous," as they are listed by the old-line companies.

Now, the condition for an engineer or conductor who earns more than one hundred dollars a month is a payment of $5.50 per month, or $66 a year, on a $2,500 policy, with $15 weekly indemnity for 26 weeks, and one-half, or $7.50, if he is disabled more than 26 weeks, and full payment on his policy if he is killed while on duty in the service of the company; but if he dies from other causes he receives only $1,250, and benefits on account of accidental injury will be paid only when shown by evidence satisfactory to the superintendent to have been received while actually engaged in the performance of duty in the service of the company.

Now, the old-line schedule before me lists $2,500, extra hazardous, $15 weekly indemnity, at $4.26 a month, or $51.36 a year, and full payment of $2,500 whether killed following his occupation or otherwise or dies a natural death. And when we understand that about sixty of every one hundred maturing policies under the Plant System would only receive $1,250, because 60 per cent die natural deaths, and that indemnity is not paid when injury is received when not on duty, it does not take long to fathom the incentive that actuates its superintendent in adopting this means of relieving the Plant Company of sustaining its legitimate liabilities, and possibly having something left, and with no means provided by which one of these employees who have paid excess charges over Engineers—a difference of $271,250; this, added to the $258,863 excess payment,

cost of maintenance ever getting any of it back. And if they are discharged or leave the service of the company these accumulations, which are sure to accrue, remain the property of some one—Who?

Now, we will make a comparison with the Brotherhood of Locomotive Engineers' Mutual Life and Accident Association. This is the extra-hazardous risk. For the twelve months ending July 20, 1896, there were 141 natural deaths, 73 killed and died from injuries received, 17 loss of hand or foot, and 22 loss of eye, a total of 253. Of the killed, 1 was thrown from his horse, 3 died from gunshot wounds, 1 thrown from a buggy, 1 drowned, and 1 killed in a cyclone, and these the Plant would pay half or declare them forfeited entirely. The cost of carrying $2,500 in the Brotherhood of Locomotive Engineers' Mutual Life and Accident Association for the past year, with 39 liabilities maturing for loss of hand, foot, or eye, has been $41.66, and the cost of weekly indemnity equal to the Plant is carried on in many of our divisions for 75 cents a month, or $9 a year, making a total of $50.66 for $2,500, with weekly indemnity and the policy always paid in full. Now, let us see what the difference would amount to paid in full, as the Brotherhood of Locomotive Engineers does, and natural deaths one-half, as the Plant System does. Two hundred and fifty-three policies maturing at $2,500 amounts to $630,000. Now, the Plant System would only pay in full for those killed—73—$182,500. As they would not pay for loss of hand or eye, they would only pay on the 141 natural deaths $176,251; total, $358,750. In favor of the Plant Company, $271,250 on policy payments only, as compared with the Brotherhood of Locomotive Engineers' insurance. If the Brotherhood of Locomotive Engineers paid its policy holders on the same basis the Plant does, it would cost but $22.50 a year to pay the bill and cost of collecting. Now, the men on the Plant System have paid $15.34 a year more for their risk being carried by the Plant than the Brotherhood of Locomotive Engineers' insurance has cost its members, and they have paid $14.64 more than an old-line company would ask, and on the ordinary class almost three times as much as the rate in an old-line company.

For further comparison we will take the number carried by the Brotherhood of Locomotive Engineers' insurance department which are all extra hazardous, and in which all payments are made in full, and loss of hand, eye, or foot paid the same as on death, which will give 39 more maturing policies than in either the Plant or the old-line company. For the information of the members of the Brotherhood of Locomotive Engineers' insurance we will take the average number carried during the year, our figures being based on the actual records of the insurance assessments for that time. We will give the amount of cost to the insured to carry $2,500 and $15 a week in each of the three and deduct the amount that would be paid on matured policies in each, leaving the balance to cover weekly indemnity, profit, or surplus.

In the Brotherhood of Locomotive Engineers' insurance 16,860 members pay in $50.66 a year, or a total of $854,127.60, and receive on 253 matured policies (the last year's record as to actual number of policies paid) $630,000, leaving balance of $224,127.60 to meet weekly indemnities. The old-line companies' figures on same number would be: Paid in by insured, at $51.36 a year, $865,929. As they do not pay for loss of hand, foot, or eye, we will deduct 17 for loss of hand or foot and 22 for loss of eye, a total of 39, leaving matured policies in old-line company 214 instead of 253, and this total would be $535,000. This deducted from the amount paid in would leave a balance of $330,929 to meet weekly indemnity claims, commissions, and profits—$106,801.40 more than the Brotherhood of Locomotive Engineers. The Plant System of payments, $66 a year on 16,860 members, would amount to $1,112,760, and they, like the old-line company, do not pay for hand, foot, or eye, and would stand at 214, same as the other. Besides this, however, they do not pay but half on natural deaths; so the account would stand (taking our record again), accidental deaths, 73, at $2,500, $182,500; natural deaths, 141, at $1,250=$176,251, or a total of $358,750, and there has been $1,112,760 paid in, leaving a balance in favor of the Plant of $754,010—$529,873 more than the Brotherhood of Locomotive Engineers.

Now, the members of the Brotherhood of Locomotive Engineers' insurance pay in $11,802 less than the same risk in an old-line company, and pay out for loss of hand, foot, or eye 39 matured claims, amounting to $98,500, and having paid in $11,802 less the saving would stand $110,302 in favor of the Brotherhood of Locomotive Engineers' insurance. And when we compare it with the Plant System the members of the Brotherhood of Locomotive Engineers' insurance would pay in $258,863 less, and get in return, as we have shown, but $358,750 on matured policies in lieu of $630,000 from the Brotherhood of Locomotive

shows the cost to be greater than that of the Brotherhood of Locomotive Engineers by $530,113. Our exhibit shows a balance to meet weekly indemnity of $224,127.60, the old-line companies' indemnity fund as $330,929, and the Plant as $754,000. We have not considered the greater factor in proportion to the number employed in railroad service which do not come under the class of extra hazardous, and by examination it will be found that the saving for some one besides the insured in that class is very much greater in percentage, and while the number employed on the Plant System we presume is considerably smaller than that we have used in this article, we think we are safe in saying that this philanthropic Superintendent Dunham will be able without much difficulty to figure out enough to at least pay the doctors and do so without using any of the Plant System's earnings, but get it out of the pockets of the employee, not by voluntary contribution, but by a system of coercion, the employee being afraid to do otherwise, fearing the loss of position. There are other railroad companies that have paternalism with similar conditions, but it has been left for Superintendent Dunham to reach the extreme in compelling the employee to more than pay the company's losses without sharing in its profits. The owners of the Plant System can not relieve themselves of their responsibility for having a tyrant as their business manager, who resorts to every kind of scheme of good or ill repute to foster his or their interests.

I presume there are those interested in the Plant Relief and Hospital Association who will try to deny the statements in this article, and to show that the company is not only doing their share toward expense, and are really actuated by a love of caring for their employees, but in doing so—if they wish to be honest in it—they must first show what had been the legitimate cost of medical attendance on the company's business before the employee began to pay the bills; and also show the real diminution of the expense of their legal department, by virtue of the contract the employee signs, forfeiting his claims to the benefits which should accrue to him from his own payments into the relief and hospital fund, if he or any of his heirs or assigns should presume to sue the company, even though the injury was caused by the grossest carelessness on the part of the officials of the company themselves. There are those who maintain that the employees like these associations—the contract, compulsory part, and all—but the best explanation of that is that they do not like to say they do not like it.

The readers can infer as much as they like. There is a redeeming quality in hospital departments rightly conducted. Where the collections from the employees are moderate, and where there is no ironbound contract to relieve the company of its rightful obligation to pay legitimate claims against it, and in which there does not enter the speculation-fostering features of the others, there is a streak of charity in it, and though one never expected to be benefited by it personally, having a home of his own, they willingly contribute for the benefit of others whose circumstances differ. There is a good chance in hospital system relieved of the other feature for company officials to be actuated by a meritorious desire to benefit and relieve suffering humanity when the occasion requires it. We believe the public should know what is the real intent and purpose of the man at the head of the Plant System. That it is not charity, they need not be told; that it is gain, pure and simple, is self-evident, and ought to be condemned. He has denied the employee the right to a voice in any condition as associated with the Plant System, and they have no voice in this relief and hospital department. They are requested not to use their voices, but a pen to sign away their liberties at the command of Superintendent Dunham or suffer discharge.

This article was prepared by Mr. C. H. Salmons, the editor and manager of the Locomotive Engineer's Journal, and was printed in that journal for September, 1896; and Mr. Salmon writes me that no one has so far understaken to disprove any of the statements contained in it.

One of the great luring promises put forth by the relief departments is the pension feature. This is also looked upon with suspicion by the men, as they claim that a man who has stamina enough about him to protest against unfavorable conditions being imposed upon him will not be allowed to remain in the service long enough to be put upon the pension list; and they prefer to look after their own future rather than have paternalism exercised over them by the companies.

The Interstate Commerce Commission, in its Thirteenth Annual Report, in touching on the question of relief departments, said:

"There are some conditions imposed upon members by the relief departments which have provoked no little criticism. For instance, objection is made that two of the railroad companies make membership a condition of employment; another objection is that, generally, membership is forfeited when the em-

ployee's service in the company terminates, and still another is that all the relief departments provide that an employee or his beneficiary, by accepting the benefits offered by the relief, thereby waives any legal right to recover damages against the company in case of injury or death caused by accident. It is also urged against these relief departments that they create in the mind of the employee a sense of dependence on the continued good will of the employer, since any beneficial interest in the relief fund ceases upon the discharge of the employee or his voluntary retirement from the employer's service. Moreover, when contracts are exacted requiring membership of relief departments as a condition of receiving employment, there is said to be a tendency toward, if not the actual assumption of, powers which ought not to be exercised by railway corporations." (Tenth Annual Report of the Interstate Commerce Commission, p. 111.)

The following are a few editorials from the journals of our organizations, which contain some very good arguments against these relief associations, and will, I believe, be of some assistance to the Commission:

"One of his admirers, in writing of the life of Mr. McLead, declared him to be a democrat in his dealings with his employees, and in support of his statement said there was no hand on the Reading so much covered with dust and grease that the president would not shake it. Another proof of his solicitude for his employees was made as follows: 'The first thing he did upon assuming prominence in the company was to start a relief association among the men, which has a membership of 15,216 and a surplus in the treasury of $228,480.43. The receipts of the association last year were $262,787.28 and the disbursements were $241,101.91. It is administered by an advisory board composed of ordinary employees and a number of the representatives of the Reading's board of managers.' This looks good and sounds better, but the romance and sentiment attached to the story can not bury the truth. * * * There is not the first principle of democracy in any part of it, although there is an assumption of such in allowing ordinary employees to meet and hear the managers of the road direct the government of the association. The fact that the board of managers have their representatives to assist gives a pretty fair idea how far the wishes of the employees are allowed to govern. Membership in this far-sighted and benevolent association is made a condition of employment; promise not to join any labor organization, or to withdraw from those already joined, is part of the same contract drawn by this democrat. Under the guise of philanthropy this association has taken from the men on the system in one year over $262,787 and given them in return $241,101, while the balance is kindly held for them by the company, which is anything but a reliable depository. This same democrat would have extended his pet scheme to the leased lines had the employees of those lines not met the proposition with organized and determined resistance, and had system federation not been in force among the organizations of railroad employees on the leased lines, they too would be paying tribute to this, the greatest philanthropic fake the workingmen of this country have ever had to submit to. Their combined front presented in opposition to this infamous proposition alone saved them from the humiliation of placing their necks under this oppressive yoke." * * * (Railroad Trainmen's Journal for May, 1893, p. 381.)

The Railway Conductor for March, 1897, page 180, speaking on a law introduced in Iowa to declare void all contracts wherein employees waived their rights to recover for injuries by accepting benefits from relief departments, says:

"This is the substance of the contention we have always made upon this subject, and is no more than common sense and common justice would dictate. When men are compelled to pay for their insurance it is their property, no matter whether it be the company employing them or some private corporation selling the insurance, and the fact that they accept insurance for which they have paid should have no more bearing upon their right to collect from the company for damages received than the acceptance of groceries upon the same terms. So long as the men are obliged to support the insurance they should be protected in their right to the product of their investment, and the companies should not be allowed to exploit them in this way in order to save having to pay for damages wrongfully inflicted. The measure is a just one and should be made law, not only in Iowa, but in all the States where similar attempts are being made to compel railroad men to insure themselves against the ignorance or carelessness of others in the interest of the employing corporations.

"RELIEF ASSOCIATION CONTRACTS.

"This subject has attracted the attention of railway employees to an unusual degree of late, and has been brought prominently to the attention of legislators

by the numerous appeals on the part of railway employees for legislation which would more fairly protect their interests than that which now exists.

"Voluntary or so-called voluntary relief associations, practically or wholly controlled by the employing corporation, and in which their employees or seekers after employment are required to hold membership or declare their willingness to do so, have always been distasteful to the employees. Aside from the natural resentment felt by the employee, the principal objection to these relief associations lies in the fact that the employee, upon becoming a member of the association, is required to sign a contract under which if he is injured while in the discharge of his duties and accepts the temporary financial relief provided by the association, he relinquishes and releases all right to recover damages against the employing corporation through suit at law. On the one hand, it is held that the man in search of employment, and who has behind him the imperative duty of providing for those who are dependent upon his daily toil for sustenance, will not hesitate long about signifying his willingness to become a member of the relief association.

"It is claimed that the contract releasing the company from liability for damages in consideration of receiving benefits from the association is secured under duress; that it is against public policy; that it lacks the essential to all contracts—consideration; that it strikes down the voluntary right to contract, and that it lacks mutuality. On the other hand, all these claims are denied and it is claimed that the contract is a purely voluntary one. It is said that the employee can elect for himself, in the event of his receiving personal injury, whether he will relinquish his claim against the relief association or release his right to attempt to recover through appeal to the courts. Inasmuch as the employee can secure insurance against accident, and even against illness from many causes, without any conditions other than the payment of the premium, and that premium but slightly, if any, higher than that paid to the relief association, it can not be said that the association is maintained through a spirit of pure magnanimity. It is established and mantained as a means of escaping legal liability for personal injuries to employees.

"At the last session of the Iowa legislature an amendment to the laws of the State abrogating and avoiding such contracts of release of liability was the occasion of the most earnest and spirited contest during the session. In the closing hours of the session the amendment was defeated in the senate, having been passed by a very large majority of the house. It will undoubtedly be again introduced at the next session, and one, at least, of its strongest opponents in the last session has declared his intention of supporting it in the future." (Editorial from the Railway Conductor for November, 1897, p. 753.)

The following resolution was adopted by the State legislative board of railroad employees of Pennsylvania, at its meeting at Sunbury, Pa., April 27, 1900:

"Whereas the relief associations now operated by the Baltimore and Ohio, Pennsylvania, and Philadelphia and Reading Railroad companies impose unfair conditions on the employees of said roads, inasmuch as the employees are required to pay the largest part of the money that goes to make up the funds, but are denied the right of majority representation on the managing boards, and are required to release the companies from responsibility for injury before they can receive benefits from these funds which they themselves have furnished the greatest part of; and as membership in these associations is practically compulsory, it keeps employees out of labor organizations, as many of them find it difficult to pay the dues in both, and they are therefore denied the benefits and protection which labor organizations give them, and in consequence are left more to the mercy of the companies; and as these roads branch out and absorb new lines, these unjust conditions are imposed upon the employees of the new lines taken in: Therefore, be it

"*Resolved*, That we condemn these associations, and assert that instead of their object being that of benevolence, as claimed by the companies, they are based upon iniquitous principles, controlled by arbitrary laws, and are in violation of the laws of Congress; and we earnestly ask Congress to investigate these associations and pass a law that will prevent their being further imposed upon railroad employees."

It may be said, as has been said before, that these are only the utterances of the officers and leaders of the organizations, and they do not express the feeling of the empolyees toward these relief departments, and that the employees are perfectly satisfied. President Cowen, of the Baltimore and Ohio Railroad Company, said in his testimony before this commission:

"I believe that the arrangement is not only a perfectly fair one, but I think

it is one which is approved by 99 per cent of our men." (Hearings before the Industrial Commission on transportation, p. 306.)

I want to say that Mr. Cowen either did not know what he was talking about or tried to misrepresent matters to this Commission. Which was the case I am, of course, unable to say. I had talked with many employees of the Baltimore and Ohio Railroad, and never heard one of them say that he was satisfied with the relief department, but after reading this statement of Mr. Cowen's I concluded that it was proper that this Commission should be furnished with evidence coming directly from the employees; so, with the approval of Grand Master Morrissey, of the Brotherhood of Railroad Trainmen, I sent a copy of the following circular to each lodge of that organization located on the Baltimore and Ohio and Pennsylvania railroads:

THE RALEIGH,
Washington, D. C., February 10, 1900.

To all Lodges of the Brotherhood of Railroad Trainmen on the Baltimore and Ohio and Pennsylvania Railroads.

DEAR SIRS AND BROTHERS: The United States Industrial Commission is investigating the subject of "Railroad relief departments," and as I have been requested by the Commission to appear before it in the near future and give testimony upon this and several other questions in which we are interested, I desire to be in a position to state to the Commission exactly how the employees feel toward these associations, and would respectfully ask you to furnish me, over the signatures of your master and secretary and under lodge seal, answers to the questions submitted on attached blank.

Kindly fill out this blank and return to me at Hotel Raleigh, Washington, D. C., in the inclosed envelope at your earliest convenience. Care will be taken to protect the officers signing this statement.

Fraternally, yours, H. R. FULLER.

CLEVELAND, OHIO, *February 11, 1900.*

Circulation of this letter with accompanying questions is approved.

P. H. MORRISSEY, *Grand Master B. R. T.*

Name of railroad system upon which your lodge is located? ———

Number of members of your lodge employed on said system? ———

(1) Is membership in the relief department considered by the employees to be voluntary or compulsory? ———

(2) Do men who seek employment receive it if they do not make application for membership in the relief department? ———

(3) Is the blank application for membership in the relief department handed to the new employee without solicitation on his part? ———

(4) Are the actions of the company's representatives such as to make him believe that the filling out of this blank by him is necessary for him to secure employment? ———

(5) Are employees who are already in the service and not members of the relief department coerced or intimidated into joining it? ———

(6) If so, in what way is this generally done? ———

(7) Is the amount deducted from the pay of the employees each month by the company considered by them to be a voluntary contribution on their part, or do they consider that they are required by the company to pay this amount to the relief department? ———

(8) Do you think membership in the relief department has a tendency to keep members out of labor organizations on account of their being unable to pay the dues in both? ———

(9) Are members of the relief department granted special privileges over those who are not members? ———

(10) Do the employees consider it fair that upon receiving benefits from the relief department they should be required to release the company from responsibility for injury? ———

(11) Do you agree with the opinion that the prime objects of the railroad companies in operating relief departments are to deprive the employees of their right to recover for injury and to alienate their interests from our brotherhoods? ———

Location of lodge, ———; date, ——— ——, 1900; name of lodge, ———; No. of lodge, ———.

[SEAL.] ——— ———, *Master.*
——— ———, *Secretary.*

The following table shows the result of the answers of the employees of the Pennsylvania Railroad to these questions:

Lodge No.	State.	City or town.	Is membership in the relief department considered by the employees to be voluntary or compulsory?	Do men who seek employment receive it if they do not make application for membership in the relief department?	Is the blank application for membership in the relief department handed to the new employee without solicitation on his part?	Are the actions of the company's representative such as to make him believe that the filling out of this blank by him is necessary for him to secure employment?	Are the employees who are already in the service and not members of the relief department coerced or intimidated into joining it?	If so, in what way is this generally done?	Is the amount deducted from the pay of the employees each month by the company, considered by them to be a voluntary contribution on their part, or do they consider that they are required by the company to pay this amount to the relief department?	Do you think membership in the relief department has a tendency to keep members out of labor organizations on account of their being unable to pay the dues in both?	Are members of the relief department granted special privileges over those who are not members?	Do the employees consider it fair that upon receiving benefits from the relief department they should be required to release the company from responsibility for injury?	Do you agree with the opinion that the prime objects of the railroad companies in operating relief departments are to deprive the employees of their right to recover for injury and to alienate their interests from our brotherhoods?
128	Delaware	Wilmington	Compulsory	Yes	Yes	No	Yes	They claim relief is a benefit and will give members preference in laying off men	Required	Yes	Yes	No	Yes.
522	....do	....do	....do	Yes	Yes	Yes	Yes	By company's officers continually boring us, saying it is to our interest to join it.	....do	Yes	Yes	No	Yes.
424	Illinois	Chicago	....do	No	Yes	Yes	Yes	By sometimes telling them one thing, and sometimes another, or that it would be a good thing	....do	Yes	Yes	No	Yes.
261	Indiana	Indianapolis	....do	No	Yes	Yes	Yes	Brakemen are never promoted who do not belong to the so-called "Voluntary relief."	....do	Yes	Yes	No	Yes.
109	....do	Logansport	....do	No	Yes	Yes	Yes	By train master calling them up several times and urging them by coercive language and actions.	....do	Yes	No	No	Yes.
16	....do	New Albany	....do	No	Yes	Yes	Yes	Men who do not belong will not get better positions.	....do	Yes	Yes	No	Yes.

124	Maryland	Baltimore	do	No	Yes	Yes	Yes	By company's representative telling them they are standing in their own light by not joining.	do	Yes	Can not say.	No	Yes.
257	New Jersey.	Camden	do	Sometimes.[b]	Yes	Sometimes.	Yes	They are told by the officials it is for their interest. Some consider this a threat.	do	Yes	Yes	No	Yes.
119	do	Jersey City	do	No	Yes	Yes	Don't know.		do	Yes	No	No	Yes.
514	do	do	do	No	Yes	Yes	No		do	Yes	No	No	Yes.
552	do	South Amboy	do	Yes	Yes	Yes	Yes	Company's representative tell you if you belong to relief you will be on the steady list.	do	Yes	Yes	No	Yes.
38	do	Trenton	do	No	Yes	Yes	No		do	Yes	No	No	Yes.
239	do	do	do	No	Yes	Yes	Yes	By canvass made by the advisory board. Men join to hold their positions.	do	Yes	Yes	No	Yes.
413	New York	Elmira	do	No	Yes	Yes	Yes	They tell you the best thing to do is to join the relief.	do	Yes	Yes	No	Yes.
84	Ohio	Ashtabula	do	No	Yes	Yes	Yes	By train master asking employees to join relief.	do	Yes	Yes	No	Yes.
260	do	Cleveland	Almost compulsory.	Yes	No	No	No		(c)	Yes	No	No	Don't know.
175	do	Columbus	Compulsory	No	Yes	Yes	Yes	You are simply requested to become a member of the relief department.	Required	Yes	No	No	Yes.
421	do	Dennison	do	No	Yes	Yes	Yes	By asking them to join	do	Yes	Yes	No	Yes.
478	do	Mansfield	do	No	Yes	Yes	Yes	The company hands the employee a blank and requests him to fill it out.	do	Yes	No	No	Yes.
79	do	Massillon	do	No	Yes	Yes	Yes	By continually soliciting	do	Yes	Don't know.	No	Yes.
21	do	Youngstown	do	No	Yes	Yes	Yes	Employer tells him that he better join if he ever expects anything in the way of promotion.	do	Yes	(d)	No	Yes.
465	Pennsylvania.	Allegheny	Voluntary[e]	Yes	No	No	No		Voluntary	Yes	No	No	Yes.
106	do	do	Compulsory	No	Yes	Yes	Yes	By having old employees go around to nonmembers and ask them to join.	Required	Yes	Yes	No	Yes.
571	do	Carnegie	do	No	Yes	Yes	Yes	By asking nonmembers to join, telling them they should belong.	do	Yes	No	No	Yes.
117	do	Columbia	do	No	Yes	Yes	Yes	By giving preference to employees who are members of relief department.	do	Yes	Yes	No	Yes.
886	do	Conemaugh	do	No	Yes	Yes	Can not say.		do	Yes	Can not say.	No	Yes.
159	do	Derry Station	do	No	Yes	Yes	Yes	By calling them to the office or by letter.	do	Yes	Yes	No	Yes.
199	do	Erie	do	No	Yes	Yes	Yes	By solicitation, and employee feels in some way that his position is more secure if he is a member.	do	Yes	No	No	Yes.

[a] But are advised to join relief.
[b] But are asked to join when employed.
[c] Members of relief satisfied to pay dues.
[d] Not noticeable, as only a few are not members.
[e] Although most all have been asked to join.

PENNSYLVANIA RAILROAD—Continued.

Lodge No.	State.	City or town.	Is membership in the relief department considered by the employees to be voluntary or compulsory?	Do men whose employment receive it if they do not make application for membership in the relief department?	Is the blank application for membership in the relief department handed to the new employee without solicitation on his part?	Are the actions of the company's representative such as to make him believe that the filling out of this blank by him is necessary for him to secure employment?	Are the employees who are already in the service and not members of the relief department coerced or intimidated into joining it?	If so, in what way is this generally done?	Is the amount deducted from the pay of the employees each month by the company considered by them to be a voluntary contribution on their part, or do they consider that they are required by the company to pay this amount to the relief department?	Do you think membership in the relief department has a tendency to keep members out of labor organizations on account of their being unable to pay the dues in both?	Are members of the relief department granted special privileges over those who are not members?	Do the employees consider it fair that upon receiving benefits from the relief department they should be required to release the company from responsibility for injury?	Do you agree with the opinion that the prime objects of the railroad companies in operating relief departments are to deprive the employees of their right to recover for injury and to alienate their interests from our brotherhood?
388	Pennsylvania.	Harrisburg	Compulsory	No	Yes	Yes	Yes	Are called to office and asked why they don't join relief, are told it is to their interest to do so.	Required	Yes	Yes	No	Yes.
42	do	do	do	No	Yes	Yes	Yes	They are requested to do so by written request from train master of their respective divisions.	do	Yes	No	No	Yes.
874	do	do	do	No	Yes	Yes	Yes	By officers calling you to office and insinuating that the best thing you can do is to join relief	do	Yes	Yes	No	Yes.
127	do	do	do	No	Yes	Yes	Yes	By holding you off till you do join, and agitating the matter all the time until you do join	do	Yes	Yes	No	Yes.
498	do	Huntingdon	do	No	Yes	Yes	Yes		do	Yes	Yes	No	Yes.
222	do	Newcastle	do	No	Yes	Yes	Yes	By handing them membership blanks from time to time.	do	Yes	Yes	No	Yes.

268	.....do....	Northumberland.	(a)	Yes...	Yes.....	Yes...	Yes.....	By a member of advisory board asking men to join.	.....do....	Yes.....	No.....	No....	Yes.
863	.....do....	Philadelphia.	Compulsory.	No....	(b)	Yes...	Yes.....	By making it appear that they will be discriminated against.	.....do....	Yes.....	No.....	No....	Yes.
160	.....do....	W. Philadelphia.	.....do.....	No....	Yes.....	Yes...	No.....	.....	.....do....	Yes.....	Yes.....	No....	Yes.
888	.....do....	Renova.....	Voluntary...	Yes...	No.....	No....	Yes.....	By committeemen of advisory board..	.....do....	Yes.....	No.....	No....	Yes.
7	.....do....	Pittsburg.....	Compulsory.	(c)	Yes.....	Yes...	Yes.....	By communication and by request....	.....do....	Yes.....	Yes.....	No....	Yes.
225	.....do....	.....do.....	.....do.....	No....	Yes.....	Yes...	Yes.....	In case there is a reduction in the force the ones that belong are retained in service.	.....do....	Yes.....	Yes.....	No....	Yes.
63	.....do....	Scottdale.....	.....do.....	No....	Yes.....	Yes...	Yes.....	.....	.....do....	Yes.....	Yes.....	No....	Yes.
521	.....do....	Sharon.....	.....do.....	Yes[d]..	Yes.....	Yes...	.....	.....	.....do....	Yes.....	.....	.....	Yes.
43	.....do....	Sunbury.....	.....do.....	Sometimes.	Yes.....	No....	Yes.....	A member of the advisory board goes to see him and tries to get him in.	.....do....	Yes.....	No.....	No....	No.
408	.....do....	Tyrone.....	.....do.....	No....	Yes.....	Yes...	Yes.....	By underofficials notifying you that you had better join, as the company desires it, etc.	.....do....	Yes.....	Yes.....	No....	Yes.
490	.....do....	Uniontown...	.....do.....	(e)	Yes.....	.....	Yes.....	By handing or sending him a blank application.	.....do....	Yes.....	Yes.....	No....	Yes.

[a] Undecided by members present.
[b] Applicant sent to doctor before employed.
[c] In some cases.
[d] But they don't last long.
[e] When employed are presented with blank.

The total number of lodges making replies to the questions was 45. They came from 36 cities and towns in 8 different States, and represent 4,031 members.

According to the answers received to question 1, 96 per cent say that membership in the relief department is considered by the employees to be compulsory.

In answer to question 2, 78 per cent say that men who seek employment do not receive it if they do not make application for membership in the relief department.

In answer to question 3, 94 per cent say the blank application for membership in the relief department is handed to the new employee without solicitation on his part.

In answer to question 4, 83 per cent say that the actions of the company's representatives are such as to make him believe that the filling out of this blank by him is necessary to secure employment.

In answer to question 5, 85 per cent say that employees who are already in the service and not members of the relief department are coerced or intimidated into joining it.

The answers to question 6 show the numerous coercive tactics employed by the company to get the employees to join the relief department. Couple these to the statement made by a railroad manager to Prof. E. R. Johnson, "That he did not care whether it was compulsory to join the association or not, for the reason that the indirect pressure that the corporation could bring to bear would accomplish the same result," and I think it clearly proves that the employees are required to join these associations against their will. (For statement of railroad manager here referred to, see Hearings before Industrial Commission on Transportation, p. 57.)

In answer to question 7, 97 per cent say that the amount paid into the relief fund by the employees is not a voluntary contribution, but that they are required by the company to pay it.

In answer to question 8, 100 per cent say that they think membership in the relief department has a tendency to keep members out of labor organizations on account of their being unable to pay the dues in both.

In answer to question 9, 57 per cent say that members of the relief department are granted special privileges over those who are not members.

In answer to question 10, 100 per cent say that they do not consider it fair that upon receiving benefits from the relief department they should be required to release the company from responsibility for injury.

In answer to question 11, 92 per cent say that they agree with the opinion that the prime objects of railroad companies in operating relief departments are to deprive the employees of the right to recover for injury and alienate their interests from our brotherhoods.

The following table shows the result of the answers of the employees of the Baltimore and Ohio Railroad to the questions:

Lodge No.	State	City or town	Is membership in the relief department considered by the employees to be voluntary or compulsory?	Do men who seek employment receive it if they do not make application for membership in the relief department?	Is the blank application for membership in the relief department handed to the new employee without solicitation on his part?	Are the actions of the company's representatives such as to make him believe that the filling out of this blank by him is necessary for him to secure employment?	Are employees who are already in the service and not members of the relief department coerced or intimidated into joining it?	If so, in what way is this generally done?	Is the amount deducted from the pay of the employees each month by the company considered by them to be a voluntary contribution on their part, or do they consider that they are required by the company to pay this amount to the relief department?	Do you think membership in the relief department has a tendency to keep members out of labor organizations on account of their being unable to pay the dues in both?	Are members of the relief department granted special privileges over those who are not members?	Do the employees consider it fair that upon receiving benefits from the relief department they should be required to release the company from responsibility for injury?	Do you agree with the opinion that the prime objects of the railroad companies in operating relief departments are to deprive the employees of their right to recover for injury and to alienate their interests from our brotherhoods?
528	Delaware	Wilmington	Compulsory	No	Yes	Yes	Yes		Required	Yes	Yes	No	Yes.
4	Illinois	Chicago	do	No	Yes	Yes	Yes	By being sent to medical examiner and examined and then you become a member.	do	Yes	Can not say.	No	Yes.
158	Indiana	Garrett	do	No	Yes	Yes	Yes	Superintendent requests them to join	do	No	Yes	No	Yes.
16	do	New Albany	do	No	Yes	Yes	Yes	Men who do not belong will not get better positions	do	Yes	Yes	No	Yes.
453	Maryland	Baltimore	do	No	Yes	Yes	Yes	By insinuating that it would be to his interest as an employee to join the relief department.	do	Yes	No	No	Yes
455	do	do	do	No	Yes	Yes	All are members.		do	Yes	(a)	No	Yes.

a All compelled to join before receiving employment.

BALTIMORE AND OHIO RAILROAD—Continued.

Lodge No.	State.	City or town.	Is membership in the relief department considered by the employees to be voluntary or compulsory?	Do men who seek employment receive it if they do not make application for membership in the relief department?	Is the blank application for membership in the relief department handed to the new employee without solicitation on his part?	Are the actions of the company's representatives such as to make him believe that the filling out of this blank by him is necessary for him to secure employment?	Are employees who are already in the service and not members of the relief department coerced or intimidated into joining it?	If so, in what way is this generally done?	Is the amount deducted from the pay of the employees each month by the company considered by them to be a voluntary contribution on their part, or do they consider that they are required by the company to pay this amount to the relief department?	Do you think membership in the relief department has a tendency to keep members out of labor organizations on account of their being unable to pay the dues in both?	Are members of the relief department granted special privileges over those who are not members?	Do the employees consider it fair that upon receiving benefits from the relief department they should be required to release the company from responsibility for injury?	Do you agree with the opinion that the prime objects of the railroad companies in operating relief departments are to deprive the employees of their right to recover for injury and to alienate their interests from our brotherhoods?
447	Maryland	Baltimore	Compulsory	No	Yes	Yes	All belong		Required	Yes		No	Yes.
497	do	Brunswick	do	No	Yes	Yes	Yes	By being dismissed for slight offenses.	do	Yes	Yes	No	Yes.
267	do	South Cumberland.	do	No	Yes	Yes	Yes	We know of one case where employee was called from his work and sent to medical examiner's office to make application	do	Yes	(a)	No	Yes.
482	Ohio	Akron	do	No	Yes	Yes	Yes	By giving men behind work over them and running younger men around them.	do	Yes	Yes	No	Yes.
425	do	Chicago	do	No	Yes	Yes	Yes	Held off until you become a member.	do	Yes	Yes	No	Yes.
175	do	Columbus	do	No	Yes	Yes	Yes	You are simply requested to become a member of the relief department.	do	Yes	No	No	Yes.

182	.....do....	Cleveland	.....do.....	No....	Yes.....	.....	Yes.....	Bulletin was issued stating all must join. All compelled to join or quit the service.	.....do....	Yes.....	Yes; at first[b]	No....	Yes.
478	.....do....	Mansfield	.....do.....	No....	Yes.....	Yes...	Yes.....	They compel employee to join before going to work.	.....do....	Yes.....	No.....	No....	Yes.
169	.....do....	Newark	.....do.....	No....	Yes.....	Yes...	Yes.....	A conductor who does not belong can not run a passenger train.	.....do....	Yes.....	No.....	No....	Yes.
21	.....do....	Youngstown	.....do.....	No....	Yes.....	Yes...	Yes.....	By letter from medical examiner.	.....do....	Yes.....	Yes[c]	No....	Yes.
878	Pennsylvania.	Bennett	.....do.....	No....	Yes.....	Yes...	Can not say.	.....	.....do....	Yes.....	No.....	No....	Yes.
216	.....do....	Connellsville.	.....do.....	No....	Yes.....	Yes...	Yes.....	If promoted to conductor, they send you to medical examiner to have insurance increased.	.....do....	Yes.....	Yes.....	No....	Yes.
457	.....do....	Foxburg.....	.....do.....	No....	Yes.....	Yes...	All belong	.....	.....do....	Yes.....	Don't know.	No....	Yes.
244	.....do....	Glenwood	.....do.....	No....	Yes.....	Yes...	All are members.	.....	.....do....	Yes.....	No[d]	No....	Yes.
518	.....do....	McKeesport ..	.....do.....	No....	Yes.....	Yes...	Yes.....	You have to belong to the relief or you can not work.	.....do....	Yes.....	Yes.....	No....	Yes.
222	.....do....	Newcastle	.....do.....	No....	Yes.....	Yes...	Yes.....	By handing them membership blanks from time to time.	.....do....	Yes.....	Yes.....	No....	Yes,
887	.....do....	Philadelphia .	.....do.....	No....	Yes.....	Yes...	All belong	No one is given employment who is not willing to join relief department.	.....do....	Yes.....	All belong..	No....	Yes.
179	.....do....	Pittsburg	.....do.....	No....	Yes.....	Yes...	Yes.....	By being held off until they join relief department.	.....do....	Yes.....	.....do.....	No....	Yes.
490	.....do....	Uniontown...	.....do.....	No....	Yes.....	Yes...	All belong	.....	.....do....	Yes.....	.....do.....	No....	Yes.
862	West Virginia.	Martinsburg..	.....do.....	No....	Yes.....	Yes...	Yes.....	The company expects it.....	.....do....	Yes.....	.....do.....	No....	Yes.
855	.....do....	Parkersburg..	.....do.....	No....	Yes.....	Yes...	All belong	.....	.....do....	Yes.....	.....do.....	No....	Yes.
110	.....do....	Wheeling.....	.....do.....	No....	Yes.....	Yes...	No.....	.....	.....do....	Yes.....	Yes.....	No....	Yes.

[a] All are compelled to belong to relief.
[b] Promotion depended on membership; now all are members.
[c] Promotion depends upon membership.
[d] As all belong, required to join before employed.

The total number of lodges making replies to the questions was 28. They came from 26 cities and towns in 7 different States and represent 1,674 members.

In answer to question 1, 100 per cent say that membership in the relief department is considered by the employees to be compulsory.

In answer to question 2, 100 per cent say that men who seek employment do not receive it if they do not make application for membership in the relief department.

In answer to question 3, 100 per cent say the blank application for membership in the relief department is handed to the new employee without solicitation on his part.

In answer to question 4, 100 per cent say that the actions of the company's representatives are such as to make him believe that the filling out of this blank by him is necessary to secure employment.

In answer to question 5, 69 per cent say that the employees who are already in the service and not members of the relief department are coerced or intimidated into joining it. This low percentage may be accounted for by the fact that 24 per cent of the answers to this question say that all belong to the relief department; consequently there is no reason to coerce them.

The answers to question 6 are similar to the answers given by the Pennsylvania employees to the same question, and, as I have before said, show the many ways the company goes about it to force the employees into the association.

In answer to question 7, 100 per cent say that the amount paid into the relief fund by the employees is not a voluntary contribution, but they are required by the company to pay it.

In answer to question 8, 92 per cent say that they think membership in the relief department has a tendency to keep members out of labor organizations on account of their being unable to pay the dues in both.

In answer to question 9, 33 per cent say that members of the relief department are granted special privileges over those who are not members. This low percentage may also be accounted for by the fact that 40 per cent of the answers to this question say that all belong to the relief department.

In answer to question 10, 100 per cent say that they do not consider it fair that upon receiving benefits from the relief department they should be required to release the company from responsibility for injury.

In answer to question 11, 100 per cent say that they agree with the opinion that the prime objects of railroad companies in operating relief departments are to deprive the employees of the right to recover for injury and alienate their interests from our brotherhoods.

In addition to the answers to these questions received from the lodges I have received numerous letters and papers, sent unsolicited by members of these relief departments, which are very unfavorable to the departments. The following are some of them. In order to fully protect the men who wrote these letters I withhold their names, but I have the original letters here with me and would like to have the commission look them over:

"H. R. FULLER,
"*Washington, D. C.:*

"The relief department has made amendments to the by-laws without consulting the ones who pay to keep it up, and make laws in which we have no say whatever, and in the last lot of amendments adopted by them all of our members kicked against those changes, but they were made all the same and they were given to us after they were adopted by the officials. We had no vote in the matter and have no say whatever what shall be the laws which govern us and what shall be done with the money we pay in, and we don't know what becomes of it, only what they choose to put on paper and give us, and no information will be given us, as we have tried to find out such things the same as we do in our own lodge room.

"Yours, fraternally."

"Mr. H. R. FULLER,
"*Washington, D. C.*

"DEAR SIR: Your letter of a few days ago was recieved and contents noted. The inclosed sheet was filled out and inclosed you for your consideration, etc., and hope that the matter will be taken up at the earliest possible moment to see what can be done.

"Of course you will understand you will have to treat our names as confidential, otherwise there will be consequences.

"Fraternally, yours."

"Mr. H. R. FULLER,

"*Legislative Representative, Washington, D. C.*

"DEAR SIR AND BROTHER: Yours of the 17th received and noted. Think you will find blank O. K. now. The Pennsylvania Railroad relief is in a way not compulsory; men are employed without joining relief, but are almost forced to join afterwards. They are made to believe that if they are not members of relief they may expect to get released at any time.

"Fraternally, yours."

"H. R. FULLER, Esq.

"DEAR SIR AND BROTHER: I think I can give you some information that will be of use to you, but if you make use of the same I would ask that my name be not mentioned. The Baltimore and Ohio relief has a clause in their regulations which says that after a member becomes 65 years old and is unable to work that he will be pensioned. My father has been in the employ of the Baltimore and Ohio for forty-nine years and has a record of never having been suspended. He is now 71 years old and unable to work. He applied for a pension but as yet has not received it, and the excuse for not giving him the same is that there is not enough money in the pension feature to put any more on it, yet the relief has posters all around stating that they have money to lend employees on houses, etc. My father has been a member ever since it started. If this was some boss he would have got it without much trouble. For what I pay in the relief I can get about three times the benefits in other organizations.

"Yours, in B., S., and I.

"P. S.—Please destroy this communication."

[Camden Lodge, No. 257, Brotherhood of Railroad Trainmen, meets second and fourth Sundays at 1 p. m.]

"CAMDEN, N. J., *April 6, 1900.*

"H. R. FULLER.

"DEAR SIR AND BROTHER: Inclosed you will find copies of letters in regard to the voluntary relief fund of the Pennsylvania Railroad system. I have the original letters in my possession, but have promised not to divulge the names of supervisor or foreman. I think it would be well to have the copies typewritten, as my handwriting is well known here, for I suppose you will use them in your work. Hoping for the full success of your enterprise,

"I remain, fraternally, yours."

The following are the copies of the letters that were inclosed with the above letters:

"PENNSYLVANIA RAILROAD,
"WEST JERSEY AND SEASHORE DIVISION,
"*Woodbury, January 30, 1900.*

"S——— ———.

"DEAR SIR: I think by this time you have been able to judge if ——— will suit you in the gang.

"Please get him to join the relief fund at once. If he will not, get another man that will.

"Yours, truly, "———— ————, *Supervisor.*"

"PENNSYLVANIA RAILROAD,
"WEST JERSEY AND SEASHORE DIVISION,
"*Woodbury, N. J., March 20, 1900.*

"*To all Foremen, Salem Branch and Bridgeton Branch:*

"You will arrange to increase your force April 1, one (1) more laborer, making a total of three (3) laborers, at 12 cents per hour. Condition of employment of this man is that he join the relief fund; also give their full names.

"Yours, truly,

"———— ————, *Supervisor.*"

Now, I ask you, Mr. Chairman, to compare the answers contained in these tables, also these few letters, to the statement of President Cowen that the relief department is approved by 99 per cent of the men. Is it reasonable to think

that these employees aprove an association which they are compelled or forced to join to hold their positions—an association which takes from them their legal rights because they drew benefits from a fund that they themselves have created over 80 per cent of? I would answer no. The manhood and independence of these men rebel against such unjust conditions, and they are opposed to these associations rather than in favor of them. If Mr. Cowen had said that 99 per cent of the men were opposed to these associations, I think his statement would have come nearer being correct.

A very small per cent of the roads operate relief associations; but they are slowly growing, and the large lines which now operate them are leasing and buying in new branches. The relief departments are introduced on the newly acquired lines, and in this way are being extended year by year. Speaking theoretically, I believe, from a competitive standpoint, that the roads which operate relief departments have an advantage over those which do not, inasmuch as they reduce damage suits, which must mean thousands of dollars to the companies each year. This was practically admitted by Mr. Cowen when he said that these associations had almost entirely done away with damage suits. To put all roads on the same level in this regard means that we must do one of two things—allow these departments to be extended to all roads, which would be to extend an evil which the employees would bitterly resist, or prohibit their further operation by the roads now having them.

Section 10 of the act of Congress approved June 1, 1898, forbids the making of membership in these associations a condition of employment. It also forbids the employer from requiring the employee to enter into these contracts releasing the employer from responsibility for injury; but this law is being openly violated and defied. In order to show to the Commission how boldly these railroad companies do this, I will quote that part of the law applying to such cases and then quote some of the words used by these companies in defiance of it. The law reads:

"That any employer subject to the provisions of this act, and any officer, agent, or receiver of such employer * * * who shall require any employee or any person seeking employment, as a condition of such employment to enter into a contract whereby such employee or applicant for employment shall agree to contribute to any fund for charitable, social, or beneficial purposes, to release such employer from legal liability for any personal injury by reason of any benefit received from such fund beyond the proportion of the benefit arising from the employer's contribution to such fund, * * * is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof, in any court of the United States of competent jurisdiction in the district in which such offence was committed, shall be punished for each offence by a fine of not less than one hundred dollars and not more than one thousand dollars."

Letter of President Huntington, of the Southern Pacific Railway, to the employees of that road on February 15, 1900:

" * * * Applicants for employment after March 1, 1900, must become members of the relief departments before entering the company's service."

President Cowen, of the Baltimore and Ohio Railroad, when testifying before this Commission, after having had this law read to him, said:

"If it is sought by that act to change the agreement that is made between the railroad company and its employees, I should say that the act is invalid—that a party has a perfect right to make that agreement on his part, and the railroad company has the right to make that agreement. I should take that position unhesitatingly, even if I thought that act covered our department. It is an enormous advantage to the employee."

He was then asked this question:

"As a lawyer, would you not take the position that the law should be complied with until declared unconstitutional?"

To this he answered:

"No; I would not. On the contrary, the only way you are going to get a decision as to its constitutionality is not to comply with it."

This convinces me that the law on this question is inadequate, and that as long as these relief associations are allowed to exist, just so long will these companies take unfair advantages of the employees; and I think the only effective remedy is to legislate these associations out of existence by prohibiting railroad companies from operating them. I would, however, require the railroad companies to still carry the insurance of those employees that they have forced into the associations and have become so crippled or grown so old that no other insurance company will insure them.

[S. 4092, Fifty-eighth Congress, second session.]

FEBRUARY 3, 1904.—Mr. Penrose introduced the following bill; which was read twice and referred to the Committee on the Judiciary.

MARCH 7, 1904.—Committee on the Judiciary discharged from further consideration; referred to the Committee on Interstate Commerce.

A BILL Relating to liability of common carriers by railroads in the District of Columbia and Territories and common carriers by railroads engaged in commerce between the States and between the States and foreign nations to their employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every common carrier by railroad engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any Territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his heirs at law, for all damages which may result from the negligence or mismanagement of any of its officers, agents, or employees, or by reason of any defect or insufficiency in its cars, engines, appliances, machinery, track, roadbed, ways, or works.

SEC. 2. That in all actions hereafter brought against any such common carriers by railroad to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight in comparison to that of the employer.

SEC. 3. That no contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however*, That upon the trial of such action against any such common carrier by railroad the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his heirs at law.

SEC. 4. That nothing in this act shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the safety-appliance act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three.

REPORT OF COMMITTEE OF CHAMBER OF COMMERCE OF THE STATE OF NEW YORK.

Senator KEAN. I desire, on behalf of the chairman, to present the report of the committee on internal trade and improvements of the Chamber of Commerce of the State of New York. It is under the seal of the chamber of commerce, and I should like to have it printed in the minutes:

CHAMBER OF COMMERCE OF THE STATE OF NEW YORK,
New York, May 17, 1905.

Hon. STEPHEN B. ELKINS,
Chairman Committee on Interstate Commerce,
Senate, Washington, D. C.

DEAR SIR: I send you herewith, for the information of your committee, a certified copy of a report adopted by the chamber of commerce, on the 2d of February last, on the proposed increase of power to the Interstate Commerce Commission.

Very respectfully,

GEO. WILSON, *Secretary.*

Report of the committee on internal trade and improvements of the Chamber of Commerce of the State of New York on the proposed increase of power to the Interstate Commerce Commission.

[Adopted by the chamber, February 2, 1905.]

To the Chamber of Commerce:

The Chamber of Commerce of the State of New York represents the mercantile, manufacturing, transportation, and commercial interests of the State generally. These are all closely interwoven with the business interests of the whole country, subject to the same influences, and fostered or depressed alike by favorable or adverse forces.

The cost of transportation is a most important factor in determining the measure of profit and the degree of business prosperity. Uniform rates, granted alike to all interests under similar circumstances, are indispensable for the protection and preservation of the rights of individuals and localities. It is a well defined and well recognized duty of common carriers to treat the public alike, except in so far as the wholesale and retail principle, or other well recognized causes, may justify differentiation.

We are opposed to unjust discrimination in favor of individuals, corporations, or localities. We are opposed to secret rates, rebates, or drawbacks as a means of discrimination. We believe the freight of a shipper, loaded upon the cars of the railroad on its own tracks, is entitled to as favorable a rate as though loaded upon a siding extending into the factory or warehouses of another shipper. It seems to be generally conceded that in many localities the ownership of terminal trackage or cars specially fitted for the transportation of certain classes of goods is made the basis of discriminating rates to the owners of such trackage or cars to the great detriment of their competitors in business.

We believe the railroads should in general own or control the cars used in transportation, and in case of the use of specially constructed cars, not owned by the railroad granting the rate, a uniform compensation should be fixed, of which any and all shippers could take advantage.

In 1879 this chamber after much labor induced the legislature of the State of New York to create a committee of investigation to inquire into the question of discrimination against the city of New York and in favor of other seaboard cities; discriminations as between localities and as between individuals. The committee thus created took over 6,000 pages of testimony, and the state of affairs disclosed fully justified all the criticism which had been made. The rankest and most unjust favoritism was shown to exist. As a result of such investigation the committee reported bills which became laws, regulating the much-abused proxy at stockholders' meetings and prescribing in great detail the form of report which railroads were required to make, so as to make a continuous balance sheet and permit comparison by investors of one year's business with another. They also reported the bill, which became a law, creating the present State railroad commission. By bestowing upon the commission the power of investigation and requiring them to report the result of the same it was hoped that exposure and publicity would correct existing

wrongs and inequalities and deter the creation of new ones; that the restraining influence of public comment and criticism would be most efficacious in correcting abuses. This hope has been fairly realized.

This chamber worked hard for the creation of a national railroad commission, realizing that the collation and publication of statistics of all the roads of the country would educate the country as to existing and varying conditions and form a basis for intelligent remedial action where necessary. We were confident also that such a commission, with power to investigate and publish the result of their investigation, would be in a position to redress wrongs and adjust inequalities. The existence of such power would be a strong deterrent influence against wrong practices, and the recommendations of the commission would be almost certain to be complied with. This belief has been largely justified by the result, for the record shows that 90 per cent of the complaints presented to the commision have been settled by correspondence and negotiations without formal proceedings; that of the remaining 10 per cent, in 8 per cent of the cases the railroads have complied with the orders of the commission, and that there has been litigation only with reference to the remaining 2 per cent. In those cases the ultimate decisions sustained the contention of the railroads to such an extent as to justify the litigation and establish the general purposes of the railroads to comply with the recommendations of the commission.

It is natural for all officials to wish to magnify their office. The Interstate Commerce Commission have, in their annual reports to Congress and through other instrumentalities for reaching the public, asked that power be granted them to fix and determine rates of transportation. This subject received great prominence in the annual message of the President. Several bills are now pending in both branches of Congress, the crux of which is the granting of rate-making powers to the Interstate Commerce Commission as now constituted, or some succeeding body.

Since 1880, when this chamber was so actively interested in doing away with special rates and discriminations by the railroads, the cost of transportation has tended downward in a marked degree. The slight increase since 1899, amounting to about 5 per cent, has not been in proportion to the increased cost of labor and materials which railroads are compelled to use in the conduct of their affairs. This is evidenced by statistics which show that operating expenses have increased in greater proportion than gross earnings.

The prevailing charges for railroad traffic in the United States are about one-third those which obtain in England and France, and about one-half those obtaining in Germany. It would seem, therefore, that the freight charges of our railroads are not unreasonably high. As we understand it, this rate-making power is asked in order to insure to the public a uniform cost of transportation rather than a reduced cost.

The Commission say, in their annual report for 1898 (p. 27):

> It is true, as often asserted, that comparatively few of our railway rates are unreasonable in and of themselves—that is, without reference to other charges made by the same carrier or to those of other carriers [but they may operate to create a preference between individuals or localities]. The cases are exceed-

ingly rare in which reasonableness has been found merely from the amount of the rate itself as laid upon the particular traffic and the distance it was carried.

In the same year the chairman of the Commission made use of the following language in the further discussion of railroad charges:

That is to say, railroad charges which, in and of themselves, are extortionate, is pretty much an obsolete question.

When these expressions were used the rate per ton per mile was almost exactly what it is now, the difference being only 0.01 cent.

Discriminations and inequalities in rate of transportation do exist, are a legitimate grievance on the part of the public, and their correction is a proper exercise of governmental authority.

The city of New York believes itself discriminated against by the differentials granted to the cities of Philadelphia and Baltimore, while Boston, involving a longer haul, is given the same rate as New York. An issue involving a readjustment and discontinuance of such discrimination is now pending before the Interstate Commerce Commission in which the several cities interested are parties, and the several railroads terminating in these cities are also parties. We earnestly believe the city of New York is suffering a great wrong, and we confidently look to the Commission for redress.

The Constitution of the United States (Art. I, sec. 9, subdiv. 5) declares that—

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

The Interstate Commerce Commission is a body created by United States law, and, in view of the provision of the Constitution above quoted, it is impossible to see how they can sanction discriminations against the ports of the State of New York in favor of the ports of Pennsylvania, Maryland, and Virginia.

In the State of New York discriminations as between different shippers have largely been corrected and fairly done away with by present laws enforced by our State railroad commission. Chicago is the center of the railroad traffic of the country, and there is much evidence that it is also the center of railroad discrimination as well. It is important to note this in view of the fact that Illinois was one of the first States to create a railroad commission and give to the commission power over rates.

Inequalities and discriminations do exist, but will granting to a railroad commission power over rates prove a remedy? All discriminations are not made for the purpose of increasing the tonnage of the road. Railway officials, having power over rates, have in the past profited by such concessions as well as the shipper to whom they were granted. A dishonest traffic manager could as easily violate a rate made by the commission as one made by his own management.

We had upon the calendar of the supreme court in the city of New York (Borough of Manhattan), October 1, 1903, 9,618 civil jury cases and 2,399 equity cases awaiting trial. About 18 justices (including those assigned from "up-State") are engaged in disposing of these cases. With this condition of affairs it requires three years in order to force a jury case to trial, and the equity calendar is about two years behind. These facts were fully set forth in the testimony

before the commission on the law's delays and in their report to the legislature last year.

The report of the Interstate Commerce Commission, 1904, page 64, states that there were, on January 30, 1904, 2,358,960 tariffs on file with the Commission, the average number of tariffs filed annually being over 130,000. It is proposed to devolve upon the Interstate Commerce Commission the duty of inquiring into the justice and fairness of the rates contained in these tariffs, and whenever they find a rate to be unjust or unfair to fix and determine, subject to review, what the same shall be in the future. The courts have decided that a rate to be legal must be fair to the investors who own the road as well as the shippers—a rate that amounted to confiscation would not be legal and would not stand. The magnitude of this task of determining a just rate can not better be shown than by employing the language of the Commission as set forth in their report for 1893, page 100:

> To give each community the rightful benefits of location, to keep different commodities on an equal footing, so that each shall circulate freely and in natural volume, and to prescribe schedule rates which shall be reasonable, just to both shipper and carrier, is a task of vast magnitude and importance.
>
> In the performance of that task lies the great and permanent work of public regulation.

On the same question they say in their report for 1895, page 59:

> No one who understands the intricacies of transportation would care to assert that the determination of a just rate, or the decision as to what constitutes discrimination, is an easy task. To some extent the principles upon which taxation rests must be allowed in fixing a just rate; to some extent the result of the rate upon the development of industries must be taken into the account in all decisions which the Commission is called upon to make; to some extent every question of transportation involves moral and social considerations, so that a just rate can not be determined independently of the theory of social progress.

Is it not imposing an unreasonable physical strain to expect any five or seven men to perform such a task? We have the greatest respect for the Interstate Commerce Commission, but we can not ignore our everyday experience in business affairs, and they teach us that granting such power to the Interstate Commerce Commission and imposing upon them such duty is likely to lead to disappointment. Some idea of the magnitude of this undertaking may be gained from the fact that the earnings of the railroads last year were in excess of $1,900,000,000 and their capitalization in excess of $14,000,000,000, and the internal commerce of the country, largely transported by rail, has been estimated at $22,000,000,000.

Is the present method of making freight rates generically wrong? The railroads should be required, by proper statutes and proper penalties, to observe the well-defined duties that devolve upon common carriers; but is it not wiser to leave with them the responsibility of making rates?

The Supreme Court, in discussing the powers and duties of the Commission (167 U. S., 479), say (p. 506):

> It is charged with the general duty of inquiring as to the management of the business of railroad companies and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full

information as to the manner in which such carriers are transacting their business. And with this knowledge it is charged with the duty of seeing that there is no violation of the long and short haul clause; that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one as against another; that no undue preferences are given to one place or places or individual or class of individuals, but that in all things that equality of right, which is the great purpose of the interstate-commerce act, shall be secured to all shippers. It must also see that that publicity which is required by section 6 is observed by the railroad companies. Holding the railroad companies to strict compliance with all these statutory provisions, and enforcing obedience to all these provisions, tends, as observed by Commissioner Cooley in In re Chicago, St. Paul and Kansas City Railway (2 Int. Com. Com. Rept., 231, 261), to both reasonableness and equality of rate as contemplated by the interstate-commerce act.

The Commission, with their powers of inquisition, can discover the wrong, develop the evidence to prove the same, commence suit in the courts to effect a remedy; but is it not better that the trial be had in the same courts and with the same procedure in which the Government, corporations, and individuals alike now seek redress? The constitution of these courts and methods of procedure are the growth of generations, and are believed, in this enlightened age, to be the best method of enforcing rights and redressing wrongs.

The creation of additional judges or the assignment of existing judges to a specially constituted court in order to facilitate the hearing and determination of cases arising under the interstate-commerce law would be wise and commendable, but it seems to us that railroads, like individuals, have the right to have questions involving their management and welfare, including making rates, passed upon by competent judges, after a hearing conducted according to the usual rates of judicial procedure, before the same be adjudged wrong. The railways, through the ownership of their securities, represent a very large number of our citizens. The wealth of our country is very rapidly increasing. This is true of all localities and of all classes, and the securities representing the capitalization of our railroad systems are owned in varying degrees by our citizens throughout the length and breadth of the land. Large and small investors own the same directly and the poorer people own them indirectly, through their deposits in the savings banks and their interest in the life insurance companies. Investors in these securities are entitled to consideration at the hands of the Government, as well as those who make use of transportation facilities. The army of employees who derive their living from these corporations also have rights involved in any serious change in railroad transportation.

Such wrongs as exist should be righted. The President has our cordial sympathy in his efforts to right these wrongs, and both the President and Congress shall have our earnest cooperation; but we can not persuade ourselves, in the light of our own experience, that granting the rate-making power to the Interstate Commerce Commission will realize the good that advocates of the measure hope for.

It is a proposition to directly determine the earning capacity of certain properties, and, therefore, to fix their value. It grants great power over such earning capacity without any responsibility on the part of the men who exercise that power to protect the values or the income of the same, other than the responsibility to properly dis-

charge an official trust. It is a fundamental departure in governmental administration, the success of which is at least problematical, and fraught, we fear, with grave danger. It would undoubtedly be well administered under the present administration; it might be under many administrations; but it is easy to conceive an administration of such a power that would be prejudicial to the public interest.

Let the statutes clearly define the duties of railroads as common carriers, with proper penalties for all infractions of the law; let the Commission exercise their power of inquisition to the fullest extent; bring all questions which the railroads fail to adjust before the courts, and then let the court redress the wrongs and enforce the rights thus brought before them.

We believe a vigorous exercise of the powers which the Commission now possesses, and a vigorous enforcement of existing laws, would go very far toward correcting existing evils.

A. BARTON HEPBURN,
CLEVELAND H. DODGE,
FRANK S. WITHERBEE,
GEORGE GRAY WARD,
THOMAS P. FOWLER,
F. D. UNDERWOOD,
LEVI C. WEIR,
Committee on Internal Trade and Improvements.

NEW YORK, *January 30, 1905.*

A true copy.
[SEAL.] GEO. WILSON, *Secretary.*

REPORT OF THE IOWA BOARD OF RAILROAD COMMISSIONERS.

Senator DOLLIVER. In view of the references that have been made from time to time to the railroad situation in the State of Iowa I ask leave to have printed in the minutes the last report of the board of railroad commissioners of Iowa.

There being no objection, the following report was ordered printed:

Twenty-seventh annual report of the board of railroad commissioners, State of Iowa, for the year ending June 30, 1904.

Hon. A. B. CUMMINS,
Governor of the State of Iowa:

As provided by law, we herewith submit to you the twenty-seventh annual report of the board. The report will contain the usual statistical tables, the opinions of the commission upon matters presented to it for adjudication, and a record of all inspections, hearings before the board, and a brief history of each case presented.

The work of this department is constantly increasing, and the results accomplished by the board in matters presented to it for adjudication may be found by referring to that part of this report wherein the history of such cases is presented.

The law provides that certain statistical information concerning each and every railroad company doing business in Iowa shall be contained in the report of this board. This we have tried to furnish as completely as the reports furnished us by the railroad companies will permit.

The statistical tables made a part of this report will contain the information referred to.

INTERLOCKING DEVICES.

The railway companies are still constructing interlocking devices at their crossings at grade, as evidenced by the following list of those placed the past year:

New interlocking devices installed during year.

Gowrie crossing, C. and N. W., C., R. I. and P. and N. and N. W.
Cedar Falls crossing, Ill. Cent. and C., R. I. and P.
Kelley crossing, N. and N. W. and C. and N. W.
Colfax crossing, C., R. I. and P. and Colfax Northern.
Rinard crossing, C. G. W. and N. and N. W.
Mingo crossing, C. G. W. and N. and N. W.

NEW LINES IN IOWA.

During the past year about 307 miles of railway have been built in Iowa. This has been constructed mainly by the Chicago Great Western, the Chicago, Milwaukee and St. Paul, and the Newton and Northwestern railway companies. The construction work done has been of a high order both as to roadbed and bridges, and these new lines compare very favorably with those that have been built many years.

HIGHWAY AND FARM CROSSINGS.

In its report for 1900 the board said:

It has been the object and purpose of the railway companies, among other things, to strengthen and render more safe and substantial the roadbed and tracks throughout the State. In many instances the excavations and obstructions caused thereby have interfered with the view of approaching trains over highway crossings, and these new conditions are making the same more or less hazardous.

With reference to the farm crossings, many wooden trestles and other structures that from an early day, in addition to acting as waterways through the railway company's embankments, have been used as under farm crossings, are now being replaced with stone and other substantial construction which, in many instances, has had the effect of destroying the under farm crossings.

It has been the uniform policy of this board to encourage under or overhead highway and private crossings, where the constructions were feasible and the expense thereof not unreasonable.

While the supreme court of this State has held, in several cases, that a grade crossing is the rule within the State, yet we believe that the time is not far distant when such decisions may be modified.

As we have said in our last report, private or public crossings at grade may have been heretofore reasonably safe, yet where the constructions are so changed—that is, obstructions along the company's right of way which may interfere more or less with the view of approaching trains, the increased num-

ber of trains and the greater speed thereof, rendering such crossings more hazardous and dangerous to the lives of those using the highway, as well as the traveling public and the employees of the railway company, together with the increased number of such crossings, a different and more liberal and reasonable rule may be required in order that such crossings may be reasonably safe.

The commission is still of the opinion expressed in the foregoing.

INTERURBAN RAILWAYS.

This report contains such statistics as we have been able to collect with reference to the interurban electric lines in Iowa. These have been tabulated, and follow the statistics of the operation of steam railway companies doing business in Iowa.

RETURN PASSES FOR SHIPPERS OF LIVE STOCK.

Early in January of the present year, western railway companies announced the abolishment of the custom of furnishing live-stock shippers in western territory with return passes. This action brought forth active protest from the western live-stock shippers, and upon its own motion this board took up the matter in an informal way with the Iowa railway companies. After conference had been had by this board with representatives of the railway companies, the thirtieth general assembly of Iowa, then in session, proposed legislation upon the subject, and the commissioners thought it best, under the circumstances, to take no further action until the legislature had declared its purpose. The legislature passed a law known as chapter 76, wherein carriers are required to issue return passes to shippers of live stock. The commissioners went into Chicago on April 26, 1904, to have further conference with the railway companies upon this subject. They were received by the representatives of the railway companies interested, into three different conferences, with final result that orders were issued on all western lines to restore the former privileges of return passes to shippers of live stock, not only on shipments beginning and ending in Iowa, but upon all shipments.

In the portion of this report devoted to the cases before the board, the record of the commissioners in this matter will be presented in full.

ACCIDENTS IN IOWA.

Under the present statute the railway companies within the State are not required to report to the railway commission the accidents which may occasion serious injury or death, but in nearly every instance that has been done at the request of the commission. Notwithstanding the improved and better equipment of railways so far as the coupling and other devices are concerned, there is an extremely large number of persons injured and killed, occasioned by the operation of railways, each year. It is not always an easy matter to determine whether the injury or death of a person was occasioned by his own fault or negligence or the fault or negligence of the railway company, and sometimes we are fearful that that question enters into the consideration of the accident to too large an ex-

tent. The taking or losing of human life is the most appalling thing which can happen in the operation of railways. Everything should be done to eliminate as far as possible and as quickly as possible the hazard and danger incident to the operation of railways.

Undoubtedly the most effective means which may be adopted will be the elimination, as far as possible, of grade crossings, and especially those which may be termed "blind crossings," and the installation of double tracks and block systems. The public demand rapid trains both in the passenger and freight service of railways, and in order to meet the increased hazard and danger occasioned by the operation of such fast trains it will become necessary, as soon as possible, to resort to safeguards along the lines suggested.

A great deal of time and thought has been given by the managers of railway companies, and by those interested in the operation of railways and the welfare of the public, to this subject. The result which will undoubtedly follow will be a general betterment of the present conditions, but how quickly that will follow will depend largely upon the question of railway income. The people of Iowa are constantly and rightfully demanding better service of the railways; they are requiring better equipments, better roadbeds, better farm and highway crossings, and a better system of railway generally. This undoubtedly is absorbing, to a certain extent at least, a considerable portion of the income of such railways, and the railway president of to-day, in order to get his share of the business, will undoubtedly be required to keep in touch with these public demands.

INFORMATION WITH REFERENCE TO MOVEMENT OF PASSENGER TRAINS.

There seems to be an apparent disposition of many of the railways operating within the State to conceal as far as possible any and all information with reference to accidents or delays occasioned to their passenger trains. It is the judgment of the board that the tendency of the railways with reference to this subject has been rather to encourage this disposition to secrecy, and this, many times, causes hardship and annoyance to the traveling public as well as to those interested otherwise in the arrival and departure of trains.

We believe that passengers as well as those who may be interested in their safety and welfare are entitled to know, along reasonable lines, about the movement of trains in which they may be interested. The tendency among many station agents is to keep, as far as possible, all information which they may have or are able to obtain within themselves and treat those who may be interested as though they were entitled to absolutely no information.

This can be obviated and remedied by the proper officials of railway companies, and the board would suggest that this matter should be taken up with their agents to the end that the public which may be interested can and will obtain proper and reasonable information on this subject.

Train dispatchers, as well as some other officials of the railways, should be made to understand that their duty does not lie in conceal-

ing and keeping from the public such reasonable information of this character as it may well be entitled to.

ACCOMMODATIONS FOR PASSENGERS.

Another matter which has been brought forcibly to the attention of the railroad commissioners is that there are many occasions when suitable train service, in the way of furnishing suitable and additional coaches, has not been provided.

There are certain times of the year, due to holidays, excursions, and meetings of State character, which from past experience it must have been known to the railway companies that no reasonable or ample provisions had been made or were being made to provide for the extra and additional transportation. It will not do to say that the furnishing of one extra coach has been made and that is all that the additional transportation would probably make necessary, when it is known by experience and by the sale of tickets at the different points along the line of railway that the company has not done all that is required of it.

Some of the rules and regulations made by certain of the carriers in the State with reference to procuring additional coaches is so closely guarded and the authority is given in such a way and to such an official that it may be well said that the rules are an obstruction instead of an advantage either to the railway company or the traveling public. If a rule should be made that unless a passenger is provided with proper and suitable accommodations he should not be required to pay transportation therefor, it might in many ways greatly embarrass the railway company, and the railroad commissioners can see where that would or might create much dissension or dissatisfaction between the public and the common carrier; but unless there is more attention given to this subject by the common carrier and more ample provision made whereby the conductor or some other competent or capable person who may know the true situation and who may without unnecessary delay bring into requisition additional coaches which may be required the railroad commissioners of the State feel as though more stringent and adequate rules than are now in force within the State should be provided.

INSPECTION OF IOWA RAILWAYS.

Section 2113 of the Code provides, among other things, that the board "shall from time to time carefully examine into and inspect the condition of each railroad, its equipment, and the manner of its conduct and management with regard to the public safety and convenience in the State; make semiannual examinations of its bridges," etc.

This law was enacted by the seventeenth general assembly, in 1878, at a time when there were but 4,157.16 miles of railway and when the bridges were usually constructed of wood.

There are now within the State 9,803.52 miles of railway. The old wooden bridges have been largely replaced by iron, steel, stone, and concrete structures.

The commissioners have inspected many lines of railway, with the

bridges, during the past year, and have to report that they have found the roadbed and superstructure and bridges of the main lines in good condition, with but few exceptions. However, with reference to many branch lines connected with and a part of some of the "trunk lines" in Iowa, we can not speak so favorably. In many instances we have found upon these branch lines that the roadbed was not properly ballasted, that the rail joints were loose, and the ties in a condition bordering closely upon dangerous. The bridges seemed to be sound and safe.

The board believes that while it may not be necessary for the railway companies to maintain branch lines to the high standard of the main lines, where heavier locomotives and heavier traffic, with frequent trains, demand the best possible construction, yet these branch lines should be maintained and operated with strict regard to safety.

To this end the attention of railway companies is called to the condition of some of their branch lines in Iowa.

COMPARATIVE STATISTICS.

We continue in this report our former comparative statistical tables, bringing them up to the present time. These include for the State of Iowa number of miles of railway, the earnings, operating expenses, net earnings per mile of road, number of railroad employees and the amount paid for their services, the number of cars used and the number of the same equipped with automatic couplers and train brakes, the total number of employees killed and injured while coupling cars or falling from trains, and the total number of passengers, employees, and others killed and injured.

Comparative earnings and operative expenses, Iowa, including mileage and earnings per mile.

Year.	Mileage, excluding trackage rights	Earnings.	Expenses.	Net earnings.	Net earnings per mile of road.
1878	4,157.15	$20,714,408.07	$12,565,950.23	$8,148,545.84	$1,960.12
1879	4,396.04	21,340,709.44	12,904,420.92	8,436,288.52	1,985.88
1880	4,977.01	24,857,545.35	13,982,653.77	10,854,891.58	2,181.00
1881	5,425.98	28,452,181.91	16,788,404.39	11,663,777.52	2,149.63
1882	6,337.43	32,023,966.03	20,512,393.05	11,511,572.98	1,816.44
1883	7,014.16	34,451,354.77	22,827,450.50	11,605,904.27	1,654.45
1884	7,249.25	35,735,971.85	23,260,816.03	12,484,355.82	1,054.45
1885	7,478.43	36,123,587.45	23,093,581.04	13,030,006.41	1,742.34
1886	7,564.67	36,093,108.54	22,931,555.10	13,161,551.44	1,739.87
1887	7,997.50	37,529,730.02	24,152,980.71	13,376,749.31	1,672.59
1888	8,846.31	37,295,586.68	26,297,163.92	10,998,422.76	1,377.73
1889	8,946.00	37,138,359.75	25,280,309.30	11,852,050.45	1,480.19
1890	8,412.72	41,318,133.89	27,396,282.83	14,021,849.76	1,666.75
1891	8,413.16	43,102,309.85	28,639,282.77	14,463,106.58	1,719.15
1892	8,407.34	a 37,405,473.22	a 25,076,828.00	a 12,328,645.22	1,466.41
1893	8,401.76	45,003,680.51	32,622,584.42	12,381,096.09	1,474.81
1894	8,489.88	40,009,679.92	28,089,531.03	12,679,145.89	1,493.56
1895	8,486.36	35,835,910.47	24,730,072.45	11,100,838.02	1,309.25
1896	8,495.07	41,841,392.55	28,795,052.59	13,105,639.96	1,542.85
1897	8,478.63	38,289,503.04	25,350,714.38	12,932,788.66	1,518.54
1898	8,484.16	45,944,596.00	29,813,031.67	16,115,564.33	1,901.64
1899	8,514.51	48,406,159.44	31,476,771.68	16,929,386.76	1,994.64
1900	9,171.49	52,074,571.77	35,409,424.92	16,665,146.79	1,815.04
1901	9,353.80	54,764,635.05	37,449,971.10	17,314,664.85	1,851.06
1902	9,485.22	59,170,528.34	39,876,480.47	19,294,045.87	2,034.12
1903	9,496.00	57,159,083.09	40,752,847.60	16,433,235.49	1,730.55
1904	9,803.52	57,092,005.10	42,694,000.85	14,998,034.25	1,529.66

a Three Chicago, Burlington and Quincy lines not reporting.

Compensation of railroad employees in Iowa.

Year.	Number.	Yearly compensation.	Average daily compensation.
1878	13,518	(a)	
1879	15,341	(a)	
1880	18,985	(a)	
1881	21,974	(a)	
1882	17,273	$8,329,810.31	$1.72
1883	27,112	13,164,288.07	1.55
1884	26,731	13,970,601.65	1.66
1885	25,666	13,628,057.66	1.69
1886	25,761	13,677,780.58	1.69
1887	29,088	15,146,234.64	1.66
1888	30,794	16,235,348.31	1.66
1889	24,642	14,212,590.27	1.67
1890	24,351	16,218,188.69	2.12
1891	27,589	16,264,038.45	1.66
1892	30,198	17,870,915.89	1.69
1893	31,127	16,349,473.88	1.69
1894	29,308	16,378,740.81	1.78
1895	24,107	14,186,803.35	1.87
1896	29,165	16,052,796.79	1.89
1897	28,660	15,157,319.49	1.81
1898	30,009	17,280,215.01	1.83
1899	32,385	18,406,383.76	1.89
1900	37,696	21,363,319.55	1.80
1901	37,838	22,253,822.79	1.88
1902	40,630	23,115,095.43	1.89
1903	42,484	24,688,563.17	1.89
1904	36,508	25,338,102.20	2.10

(a) No data.

Automatic couplers and train brakes—Number of cars equipped and number of employees and accidents to employees from coupling cars and falling from trains.

Year.	Number of all cars.	Equipped with automatic couplers.	Equipped with power or train brake.	Number of employees.	Number killed coupling cars.	Number injured coupling cars.	Number killed falling from trains.	Number injured falling from trains.
1878	29,057			13,518				
1879	31,564			15,341				
1880	54,451			18,985				
1881	67,510			21,974				
1882	85,208		1,531	17,273	16	122	31	57
1883	98,100		1,814	27,112	16	98	33	42
1884	103,357		1,917	26,731	8	109	10	57
1885	102,835		2,200	25,666	13	174	14	34
1886	100,178		2,164	25,761	10	126	25	33
1887	91,007		2,545	29,088	9	134	23	39
1888	113,975		1,804	30,794	19	240	33	52
1889	120,757	4,210	3,656	24,642	8	149	5	44
1890	127,464	9,194	10,422	24,351	14	213	17	53
1891	130,103	18,178	14,396	27,589	13	242	28	28
1892	149,731	34,315	29,047	30,198	14	196	26	69
1893	142,730	49,871	39,298	31,127	10	196	22	65
1894	127,171	46,568	37,784	29,308	7	91	17	39
1895	158,721	58,933	53,078	24,107	5	80	20	37
1896	182,629	70,718	67,050	29,165	6	97	19	35
1897	171,909	101,851	90,684	28,660	7	80	14	65
1898	176,035	142,638	105,323	30,009	4	75	18	50
1899	190,730	160,505	127,907	32,385	12	79	19	64
1900	200,814	188,666	134,631	37,696	8	59	20	59
1901	211,883	250,464	158,712	37,838	6	32	21	100
1902	237,269	230,276	183,712	40,630	4	49	8	99
1903	257,127	304,789	217,072	42,484	11	83	27	87
1904	284,748	280,559	237,248	36,508	10	75	30	147

Accidents to persons in Iowa.

Year.	Killed.			Injured.		
	Passengers.	Employees.	Others.	Passengers.	Employees.	Others.
1878	20	29	31	51	137	35
1879	2	42	40	12	108	39
1880	5	37	38	9	140	34
1881	7	67	34	17	146	31
1882	7	89	69	60	509	72
1883	4	82	65	25	255	50
1884	6	72	51	47	343	59
1885	9	72	75	89	720	66
1886	8	61	62	35	386	74
1887	8	59	65	28	354	58
1888	10	101	69	77	564	86
1889	4	35	33	25	442	46
1890	9	73	69	67	579	101
1891	5	82	91	80	601	92
1892	23	80	76	64	258	77
1893	17	81	79	78	682	64
1894	7	48	90	62	367	62
1895	4	47	82	39	330	74
1896	6	36	94	62	411	84
1897	27	40	90	81	291	86
1898	5	44	114	80	301	70
1899	14	62	95	101	348	126
1900	9	70	148	82	449	126
1901	7	65	151	104	636	142
1902	9	64	120	104	853	129
1903	7	100	143	169	1,001	147
1904	12	90	113	201	1,419	128

ORGANIZATION OF BOARD.

On January 4, 1904, David J. Palmer, of Washington County, having been reelected railroad commissioner, qualified, and the board organized by the election of Commissioner Ed. C. Brown, chairman, and Dwight N. Lewis, secretary, for the ensuing year. Thomas H. Boylan was appointed clerk for the same period.

Respectfully submitted.

ED. C. BROWN.
EDWARD A. DAWSON.
DAVID J. PALMER.

Attest:

DWIGHT N. LEWIS, *Secretary.*

DES MOINES, IOWA, *December 5, 1904.*

CONTINUATION OF STATEMENT OF HON. JUDSON C. CLEMENTS.

Senator CULLOM (in the chair). You may proceed, Mr. Clements.

Mr. CLEMENTS. Mr. Chairman and gentlemen of the committee, when the adjournment was held yesterday afternoon I had referred to some papers relative to the ownership by different railroad companies of the stock in others. I had gone through with the papers and was asked by a member of the committee to put them in. By accident I got hold of them and took them away with my other papers. I simply want to present these papers in connection with my statement yesterday afternoon.

Senator CULLOM. They will be considered a part of your remarks and go in.

Report for the year ending June 30, 1904.

Capital stock outstanding:	
Pennsylvania Railroad Company	$296,504,550
Pennsylvania Company	40,000,000
Baltimore and Ohio Railroad Company	184,244,812
Chesapeake and Ohio Railway Company	62,799,400
Norfolk and Western Railway Company	89,000,000
Philadelphia, Baltimore and Washington Railroad Company	23,494,575
Northern Central Railway Company	11,462,300
Of the stock of the Pennsylvania Company	40,000,000
Pennsylvania Railroad Company owned	40,000,000
Of the stock of the Baltimore and Ohio Railroad Company	184,244,812
Pennsylvania Railroad Company owned	51,773,300
Pennsylvania Company owned	16,044,600
Philadelphia, Baltimore and Washington Railroad Company owned	1,781,500
Northern Central Railway Company owned	1,781,500
Of the stock of the Chesapeake and Ohio Railway Company	62,799,400
Pennsylvania Railroad Company owned	10,130,000
Pennsylvania Company owned	4,000,000
Northern Central Railway Company owned	1,500,000
Of the stock of the Norfolk and Western Railway Company	89,000,000
Pennsylvania Railroad Company owned	25,830,000
Pennsylvania Company owned	6,500,000
Northern Central Railway Company owned	1,500,000
Of the stock of the Philadelphia, Baltimore and Washington Railroad Company	23,494,575
Pennsylvania Railroad Company owned	23,132,200
Northern Central Railway Company owned	352,200
Of the stock of the Northern Central Railway Company	11,462,300
Pennsylvania Railroad Company owned	9,401,950

Names of persons on the board of directors of more than 5 railway companies.

	Boards.
Green, John P	24
McCrea, James	17
Rea, Samuel	17
Shortridge, N. P	16
Woods, Joseph	16
Turner, J. J	14
Barnes, W. H	14
Taylor, E. B	13
Pugh, Chas. E	12
Wood, George	9
Cassatt, A. J	8
Prevost, S. M	8
Morris, E. B	7

It appears that the members of the boards of directors of certain railway companies, mostly in the Pennsylvania Railroad system, as given in their reports for the year ending June 30, 1904, aggregated 395. An analysis of this number shows that:

157 directorships were held by 157 persons on 1 board only.

63 directorships were held by 26 persons on from 2 to 5 boards.

175 directorships were held by 13 persons on more than 5 boards, distributed as follows:

1 person held	24
1 person held	17
1 person held	17
1 person held	16
1 person held	16
1 person held	14
1 person held	14

1 person held	13
1 person held	12
1 person held	9
1 person held	8
1 person held	8
1 person held	7
13 persons held	175

Names of the directors of the Pennsylvania Railroad Company, Pennsylvania Company, Baltimore and Ohio Railroad Company, Chesapeake and Ohio Railway Company, and Norfolk and Western Railway Company, as given in their annual reports for the year ending June 30, 1904.

Pennsylvania R. R. Co.	Pennsylvania Co.	Baltimore and Ohio R. R. Co.	Chesapeake and Ohio Rwy. Co.	Norfolk and Western Rwy. Co.
			Axtell, Decatur	
		Bacon, Edward R		
Barnes, Wm. H	Barnes, Wm. H			Barnes, Wm. H.
		Baughman, L. Victor.		
Cassatt, Alexander J.	Cassatt, A. J			
				Doran, Joseph I.
		Cowen, John K		
Cuyler, T. De Witt				
			Depew, Chauncey M.	
Ellis, Rudolph				
				Fink, Henry.
Fox, Alexander M				
		Gorman, Arthur P		
Godfrey, Lincoln				
Green, John P	Green, John P	Green, John P	Green, John P	Green, John P.
Griscom, Clement A				
		Harriman, Edward H.		
				Johnson, L. E.
Little, Amos R				
McCrea, James	McCrea, James	McCrea, James		McCrea, James.
Morris, Effingham B.	Morris, E. B			
				Morawetz, Victor.
			Newman, Wm. H	
Patterson, C. Stuart	Patterson, C. Stuart.			
Prevost, Sutherland M.		Prevost, Sutherland M.	Prevost, S. M	Prevost, S. M.
Pugh, Charles E	Pugh, Charles E			
Rea, Samuel	Rea, Samuel	Rea, Samuel	Rea, Samuel	Rea, Samuel.
		Ream, Norman B		
		Schiff, Jacob H		
Shortridge, N. Parker.	Shortridge, N. P			Shortridge, N. Parker.
		Speyer, James		
		Steele, Charles		
			Stevens, Geo. W	
		Stillman, James		
	Taylor, Edw. B			Taylor, Walter H.
	Turner, J. J			
			Twombly, H. McK.	
			Wickham, H. T	
Wood, George	Wood, George			
	Wood, Joseph			

Senator KEAN. Before we proceed, I want to call attention to an error in the record of yesterday. At the top of page 93 the attention of Judge Clements was called to what was known as the "Strawberry Case." It reads, "That was in 1902." It should be 1892.

Mr. CLEMENTS. The date was 1892. That is correct.

Senator KEAN. I would like to have that correction made.

Mr. CLEMENTS. In connection with this same question of issuing

bonds and owning bonds and stocks of one company by another, it was developed in the investigation of the Northern Securities scheme that the stock of the Chicago, Burlington and Quincy road was taken over at the rate of 2 for 1 by the Great Northern and the Northern Pacific, and they were to issue bonds and make mortgages on those roads to the amount necessary to take the stock of the Burlington at that rate. There was a large increase proposed at that time by that plan of making an annual fixed charge to pay the interest on those bonds that were put upon those northern roads in order to acquire the stock of the Burlington at a very handsome price.

I do not wish to dwell upon this particular question any further in that line or extend the discussion further, but I wish again to say, as I did yesterday in referring to those matters of ownership by one road in the stock of another, and these directorships where one person is on the board of directors of a half dozen or dozen or twenty roads, that the whole purpose of it is to indicate the process and trend of the present condition in respect to amalgamation and community of interest, resulting in the elimination of competition, which has interfered with the right of the public to be protected against extravagant and unreasonable rates.

This is no personal matter. If it is lawful for the gentlemen to do it, they are within the law, and I do not say that it is or is not. I am not talking of men. The Senator from New Jersey asked me if the Pennsylvania road, to which reference was made, was not well managed. Of course it is well managed. There is no better managed road in the country. I am not making any attack upon the Pennsylvania road or upon any man whose name appears in these papers. It is not a question of men; it is a question of conditions. That is all the reference I have made to these matters, and that, I think, is pertinent in connection with the question as to whether the public is fully protected now as against unreasonable rates.

I must pass on. I do not intend to extend my talk much further this morning.

I was asked to state some dates in respect to another matter to which I referred yesterday—that was a transaction between the Atlantic Coast Line and the Louisville and Nashville road. I have taken from the record in that case this quotation from the testimony, which I think covers the question the chairman asked me yesterday to cover by information this morning:

Mr. Gates: First began to acquire the stock, "I think, in March." Last stock which entered into the transaction bought between the "7th and 10th of April." Mr. Schwab "came to my hotel and woke me up at 2 or 3 o'clock in the morning" the 9th, 10th, or 11th of April. Option given April 15, 1902.

Mr. Erwin: On or about December 1, scrip representing 306,000 shares of Louisville and Nashville stock was delivered to the Atlantic Coast Line Railroad Company.

Those dates I think cover the information asked for yesterday respecting the beginning and end of that transaction.

I was also asked to present, as an appendix, the hearing of the Milk Case, to which reference has been repeatedly made. That I have this morning.

The paper referred to was ordered to be printed as Appendix H.

Senator KEAN. Has the Atlantic Coast Line presented any com-

plaint to the Interstate Commerce Commission for violations of the interstate-commerce act?

Mr. CLEMENTS. I can not tell you the details of that complaint. It was presented by the board of railroad commissioners of the State of Kentucky, and they were represented by the attorney-general of Kentucky. As I remember it, there was some allegation of combination in restraint of trade, in violation of the law. Whether or not there was complaint of rates I had no opportunity to ascertain last night after I left the committee room.

Senator KEAN. But the Commission occupied a good deal of time in that case.

Mr. CLEMENTS. We occupied a few days in New York, and when we quit there it was with the understanding that we would be requested to go to Louisville to take further testimony; but we never went, and the matter never went any further. If the Senator has reference to the question whether the matter involved there was one within the jurisdiction of the Interstate Commerce Commission, I am free to say that I have always had the impression that it was quite doubtful whether it was or not.

Senator KEAN. I am under the impression also.

Mr. CLEMENTS. We were not called upon to pass on that question, for the reason that, although the respondents raised that question, when we heard the case they withdrew all objections and said they would present the witnesses, Mr. Stetson and Mr. Baxter representing the road, so that what was done was done without question, by common consent, so to speak.

Senator KEAN. I was only looking at it in the way of taking up the time of the Commission.

Mr. CLEMENTS. The Commission hardly felt at liberty to refuse the State of Kentucky, as it was represented by its commission and attorney-general, to hear what they had to say about the case at least, and see whether they could present a case or not. Besides that, by the twelfth section of the act to regulate commerce the Commission is required to keep itself informed with respect to these general matters and to make recommendations from time to time. I concur in some of the statements I have seen from time to time, to the effect that probably some of the most effective good that has been accomplished has been by these public investigations held before the Commission and the publicity that has resulted.

Senator KEAN. I agree with you on that.

Mr. CLEMENTS. I am glad to hear that.

It was said a few days ago that the Commission in 1891, in the Social Circle Case, upon the testimony of a single witness, undertook to reduce the rate on first-class goods from Cincinnati to Atlanta, which would result in other changes, and it is only fair to say that that was the case that went to the Supreme Court. It was a long and short haul case, as well as involving a complaint of the rate to Atlanta. But it leaves an unfair impression to say that the Commission, on the testimony of one witness, reduced the rate or undertook to reduce it a cent below the rate that that witness said was a reasonable rate. That was another case that was prepared and decided before I came on the Commission. Colonel Morrison handled that case, and the report bears his name.

The other facts of the case pertinent to that question for a fair

understanding are that the through rate from Cincinnati to Augusta, 170 miles beyond Atlanta, was $1.07; the rate to Social Circle and intermediate points was $1.37, as I understand; the rate to Atlanta was $1.07, the same as to Augusta; the rate to intermediate points was the through rate to Atlanta plus the local rate from Atlanta. The Commission did not undertake to disturb the rate to intermediate points. The one witness, to which reference was made as being "the one," was the vice-president of the Cincinnati, New Orleans and Texas Pacific, otherwise called the Cincinnati Southern road, from Cincinnati to Chattanooga, which covered two-thirds of the entire through route from Cincinnati to Atlanta. That was the sworn testimony of the vice-president of that road. It is only fair to say that although there was but one witness that one witness was the vice-president of the road covering two-thirds of the distance. But the rate of $1.07 to the point 170 miles farther was another pertinent fact of which the Commission took cognizance.

I have nothing further I wish to say about that case, but it is only fair to say that the person who was that "one witness" should be known as a railroad man operating that line two-thirds of the distance. His testimony was taken as in the nature of an admission as to what was reasonable.

Some questions were referred to yesterday in respect to this case, out of which the Maximum Rate Case grew, and I neglected to say, as I intended to do, that not long since the rates were reduced by the carriers themselves from $1.07 from Ohio River points to Atlanta as a representative point. The old rate having been $1.07, it has been reduced to 98 cents, and only three or four days since there has gone into effect a reduction from Chicago to the Ohio River to the amount of 5 cents on first-class and relative reductions on the other classes. So that the carriers themselves have at last moved a long way in the direction the Commission then found or directed or ordered that they should do. It is true a good many years have elapsed, but there has been a substantial movement by them in that direction.

It may be said that this was not altogether voluntary. The Georgia railway commission undertook to make some rules and regulations last year, or in the early part of this year, which resulted in an application for an injunction by the railroads against that commission to enjoin a revision of rates going into effect in the State. Out of that grew a conference and compromise, the result of which was that the railroads undertook to and did reduce rates first from eastern points and then from western points all through that territory. Of course, they filed the injunction upon the theory that the rates were already low enough and ought not to be reduced. They compromised that, and the commission's case was taken out of court. If it be said that the contention of the railroads was right; that the rates were already as low as they ought to be, and that there was then a compromise, it only illustrates what I said yesterday, that a large city backed by a State commission and by influences—newspaper, public opinion, and otherwise—can be focalized so as to induce them to do a thing of this kind. Perhaps an individual or a hamlet or small town would not be able to bring about such a result as that. It is one way or the other. The rates before this change was made were either proper or improper. If they have

been forced into a reduction of them without due reason and cause, by the potency of the influence behind them, then in order to get justice or in order to get rates reduced there must be some such opinion as that which can not be brought to bear by every man in every community and every town. If it was right on the merits of the proposition, it ought to have been done without that sort of proceeding, and perhaps might have been done some time between this and the years ago when this matter was up before.

Senator CULLOM. A new condition of affairs has been brought about in the meantime so as to justify it now, when it might not have been so before.

Mr. CLEMENTS. Of course, there can be a great many changes. The Commission then said there had been great changes in the then existing conditions from what they were when that basis of rates was originally fixed, and that the density of traffic had increased on these roads. All of that was taken into account and discussed, and given among the reasons for the finding and conclusion of the Commission in that case. I hardly think that justice can be done to a full consideration of that case, if it is to be gone into without having the full report that was made at the time about it.

It has been said here that the Commission hardly assigned any reasons for what it did. The reasons are all set forth there, comparisons and costs, so far as they could be ascertained. Changed conditions may have been due to the increased volume and density of movement over those roads which had grown up, and all those changed conditions have gone on since the original basis was made.

Senator NEWLANDS. In that case did you take into consideration any of the elements spoken of by the Supreme Court, as to value of the road and fair return upon capital invested?

Mr. CLEMENTS. We undertook to do that as well as we could with the facts before us, in respect to the earnings per ton per mile, the increase in density of business, and all those things.

Senator NEWLANDS. Do you find that practically any rule of adjusting, with the considerations referred to by the Supreme Court, can be held in view?

Mr. CLEMENTS. It is very difficult to give a practical application of some of these matters in any case. I think it is said, among other things, that regard must be had to the value of the property, and perhaps to the value of bonds and stock and the earning capacity of the road and all that. Of course, the earning capacity of the road depends on the rates they are allowed to charge, in a great measure. The value of bonds and stock depends upon what they earn; what they earn depends upon the rates; and so it goes in a circle to some extent.

Senator CULLOM. I do not want to hurry you, Judge, in what you have to say, but I think it is proper that the committee should make it known that we expect to conclude our hearings in a few days, and that two or three other Commissioners are to be heard, as well as a good many other gentlemen, so that we would like to have what you have to say further condensed as much as it can be done consistently with doing justice to yourself and to the subject.

Mr. CLEMENTS. I am trying to do that, and I am very nearly through, Mr. Chairman.

As I said yesterday, it is impossible that reply can be made to many things that have been said here. I will not undertake to do that. I have done practically as much of that as I expected. I have taken certain representative samples of what I thought was unjust, unfounded, and unfair, and I must rest with that as a sample of what might be said about the others.

A good deal of reference has been made from time to time to a comparison of the rates in this country with those in England. It has been said that our rates are very much lower than they are in England. The conditions are totally different. The hauls are very much longer in this country than they are in England. The Commission has repeatedly asserted, and I think established by its official statistics, that, taken as a whole, the American rates are reasonably low, particularly upon the bulk of low-grade raw materials. It is not the intention of the Commission to claim that all rates, in this country or generally, are unreasonable. Upon the other hand, it is not conceded that such a thing as an unreasonable rate is either impossible or improbable.

But no intelligent comparison has yet been made with foreign rates since, as a rule, the comparisons have been made by the book, and no two systems of accounts in various countries are alike. The service is unlike. The shipper loads and unloads in most cases in this country, and the shipments are carload in such large proportion. The cream of the traffic here is carried by postal cars, express cars, and private car lines, which service abroad is reported as railway service, and where, too, the rate includes such terminal charges as free cartage for collection and delivery. The freight rates, for instance, of Germany cover what here is expected only of express companies with their high cost.

Senator NEWLANDS. In Germany does the shipper actually have to attend to the delivery of the goods?

Mr. CLEMENTS. I do not know how it is in Germany. My reference is to England on that point.

So often as overcapitalization is mentioned of the railways of this country, comparison is made of the $60,000 to $65,000 per mile on our roads and $200,000 per mile on English roads. Acworth shows they are worth it. We have over 200,000 miles of line, mostly single track; 270,000 miles of all lines, or about one-third of a mile extra track or siding for each mile of route. England has 20,000 miles of route, but 50,000 miles of track, or 2½ miles for each single track mile. Their roads are far better ballasted and policed; their buildings are all substantial brick or stone, while most of ours are cheap frame; their terminals are far more expensive in proportion to their shorter lines, and the equipment much more dense and expensive.

To all this should be added the fact that grade crossings are almost unknown, and the double tracking nearly universal, which means more expensive and numerous viaducts and bridges, usually of stone, where a great proportion of our own is trestle.

Much merit is made of the fact that the carriers, by their concessions in low long distance tariffs, have built up the trade of favored localities; have, as they are proud to put it, evened up the advantages of location of varied industries.

Let me read a clause from the opinion of Judge Taft and the court

composed of Justices Harlan, Taft, and Lurton, in what is known as the Chattanooga Case, a few years ago, in respect to this matter of competition and the lessening of it. This is a statement of that opinion:

> The interstate-commerce law, it is conceded, was intended to encourage normal competition. It forbids pooling for the very purpose of allowing competition to have effect. But it is not in accord with its spirit or letter to recognize, as a condition justifying discrimination against one locality, competition at a more distant locality, when competition at the nearer pont is stifled or reduced, not by normal restrictions, but by agreement between those who otherwise would be competing carriers. The difference in conditions thus produced is effected by restraint upon trade and commerce, which is not only violative of the common law, but of the so-called Federal antitrust act. (99 Fed. Rep., 52.)

Senator NEWLANDS. That was reversed, was it not?

Mr. CLEMENTS. The case was reversed, but I do not think that language was criticised in any degree by the Supreme Court. The case was reversed on the ground, as in the circuit courts in the long and short haul cases, that if there was an unjust discrimination it must grow out of the fact that the rates were unreasonable at the nearer point—Chattanooga—or that there was nothing to justify the lower rate at the other point; and they held that there was competition in that case from the Ohio River. This was in reference to freight from the East, southward through Chattanooga, and around to Nashville. That is what was involved in the complaint.

A great deal has been said here in the way of criticism of some statements that have appeared in regard to the effect of these increases, but as the committee is anxious to get on, and I want to get out of the way of others who are to speak, I will not take up that matter and go into detail about it.

But I will call attention to this fact: That the gross receipts from the railroads of the country for the year 1903 exceeded the gross receipts from the freight business in the year 1899 (two years put into that comparison) by $425,000,000. That money came from some source. There was perhaps 15,000 miles more of mileage the latter year than the first. I want to be perfectly fair about it. There had also been a decided increase of tonnage, and there had been a diminution of rate cutting and rebates, which added to the gross receipts from all these sources.

But it is idle to deny that this great increase of rates on so many hundred leading products over the country that move every day over every road in the country played no part in that vast increase of revenue in 1903 over 1899 of $425,000,000 on freight. It is idle to go into it and say that the increase of rates was a mere bagatelle or not to be considered. Why were they increased? The allegation everywhere was that it was done to get a greater revenue; that they had to confront greater expense. They did it to get money. They show what they got. Yet the argument is made that that played no part in it; that the effort was a failure; that they increased rates; but it did not produce much money from that source. That is a mere guess. It is said that the best estimate was made, but that they had nothing to estimate upon.

It is said that in the year 1899, when freight was scarce, there would be more of it—a greater proportion of it—carried. It seems to me the reverse would be the case in the natural order of things; that where

the roads were all congested and the centers were congested the freight would move then by the direct and short line, so as to relieve congestion the quickest, because they would save time to take the short route.

So in the matter of duplications, which are unavoidable because some roads do not report what originates and what is brought to them, do not segregate what originates on their own lines from what is brought to them by other lines. So there is this duplication where it is hauled from one group to another. But the same basis was used for all that in both years.

Beyond that, also, the percentage of the increase of tonnage in the year 1903 over the year 1899 was very much less than the increase in the percentage of gross receipts, which is another fact showing that when they increased all these rates on these leading articles for the purpose of getting more money they did not fail to do it. These gentlemen know what they are about. They are practical men, they are not theorists.

The CHAIRMAN. When you made the statement or report that is incorporated in Senate Document No. 257 you had before you all the data, had you?

Mr. CLEMENTS. The reports had not been handled, and most of them were in; I do not know whether all were in or not; some come in very late. But the tabulation and handling of these papers had not been put in shape in the statistician's office so that the matter could be covered at that time on an exact basis.

Senator DOLLIVER. Has any report been made since that would bring these figures up to date?

Mr. CLEMENTS. It has been stated here, I think, that, figuring on the basis of the statistician, as he does from year to year, it would show about $104,000,000.

Senator NEWLANDS. $104,000,000 increase for 1904 or 1903?

Mr. CLEMENTS. We take the tonnage and divide that into the gross receipts, but the difficulty was that the total tonnage included duplications. The statistician has a way of eliminating part of that, for this reason: Although the roads are required to report the tonnage that originates segregated from that which comes to them from another road and is hauled partly by one or more roads, consequently causing more or less duplication, yet they are requested to report those separately so that they can be divided and the truth accurately ascertained. But a substantial percentage of the roads fail to segregate the tonnage in their reports.

Senator DOLLIVER. Does not the law require them to do it?

Mr. CLEMENTS. The twentieth section of the act to regulate commerce requires them to make annual reports to the Commission, and the Commission has ordered that to be done, and prescribes and prints forms which are sent to the roads with specific directions to do these things, but a substantial percentage of them never do that. They will report the tonnage and omit the revenue, or they will report revenue and omit the tonnage, and then they will omit to segregate the tonnage which comes to them from another road from that which originates on their own road. So that the final handling of these reports by the statistician must take into account all these matters, eliminating the reports from the roads which have made imperfect reports, and reach an average from what is left.

Senator DOLLIVER. Do these failures, to make the report ordered or required, tend to vitiate the statistics and disturb their value?

Mr. CLEMENTS. I think they substantially indicate the conditions after they are finally made up, but of course you can see that it makes it utterly impossible to make an absolutely accurate statement without full and accurate reports.

Senator DOLLIVER. Would you suggest any changes in the law as to the form in which these reports shall be made so as to make them available and useful?

Mr. CLEMENTS. I think if the twentieth section were amended so that a reasonable penalty should be provided for failure to make reports, that would be a spur to cause the roads to comply not only within a reasonable time, but to comply in full. The Commission has several times recommended that. There is no penalty now. We beg for reports, and correspond about them, and do all we can to get them. That is one reason why the annual report does not appear earlier.

The CHAIRMAN. Proceed with your statement, Judge.

Mr. CLEMENTS. I do not mean, by referring to this matter of increase of revenue, to say that that was all ill-gotten gain by unjust increase. I find it necessary, in order not to be misunderstood, to caution against that. There is no pretense that there was no justification for some of these increases, and it is idle to say that they did not result in increase of revenue to the railroads.

This whole matter is before you now. I am through with what I desire to say.

The CHAIRMAN. The members of the committee will desire to ask you some questions.

Mr. CLEMENTS. Before that I would like to say that the gentleman who preceded me yesterday, Mr. Gates, of Tennessee, referred to what I understood, in the connection in which he used it, to be an allegation that the recent complaints had been solicited by the Commission. He did not say "by the Commission," but he had used the matter in such a connection that I could see no other inference, and made reference to it as an unjust, unjustifiable, and unfounded charge. The gentleman spoke to me about it after I went out of here—it was the first time I had met him—and said he wanted to say that he had no idea of intimating that the Commission had done things of that kind, but what he did mean to say was that certain literature which had been sent out from some source or other had encouraged that sort of thing. It was a mere general expression of opinion, and in justice to him I wanted to make this statement.

The CHAIRMAN. Would you suggest any amendment to the existing law to provide that the private car lines or private car systems be put under the interstate-commerce law, subjecting them to all the provisions of law relating to interstate carriers?

Mr. CLEMENTS. I have thought that it was necessary to the ends of justice that the service in connection with refrigeration should in some way be amenable to the same jurisdiction that the freight rates are, however that can be done.

The CHAIRMAN. Do you believe, or do you know directly or indirectly, that there are abuses and discriminations growing out of switching and terminal charges and paying commissions?

Mr. CLEMENTS. The Commission has investigated a few cases of

that kind where it was satisfied that a manufacturing establishment, which had a short-line switch or short road, was getting an undue and unreasonable amount of the through rate which would be awarded to the railroad. It would be incorporated as a railroad, and the Commission has no power to destroy its charter. It is incorporated and acting as a railroad and is coupled with a joint tariff with a real railroad, and we thought it got such an undue proportion of the through rate as to amount practically to a rebate.

The CHAIRMAN. Are there abuses and wrong practices between railroads and elevator companies?

Mr. CLEMENTS. It is so alleged. The Commission had occasion to investigate that matter once or twice within the last few years. Take the Union Pacific case, for instance. It was true that they were paying a certain amount for all grain put into their elevators at Omaha. Peevy & Co., who are doing business over that road and bringing it in there, would get the same allowance for their own grain which they put into their own elevator that was allowed the railroad. The railroad said it was to its interest to have it go into an elevator there, because that was the end of the line of the Union Pacific; that they did not want their cars to go East; they wanted them emptied promptly so as to use them again back West; and that it was cheaper to them to pay this allowance to Peevy & Co. on their own grain than it would be to build elevators and operate them, and so they had made this contract. The testimony shows, and in all probability it was true as a contract proposition between the elevator company and the railroad, that it was not a bad contract for the railroad; but at the same time a great many have said and thought that was an undue advantage to Peevy & Co., and that illustrates it. It is a difficult matter for the Commission, as it would be for any court, to say whether three-fourths of a cent or a cent is excessive and that part of it is rebate. It may be a little excessive, a little more than cost, and may give the man who owns the elevator a club over his competitors to that extent, and on large transactions it would amount to a good deal, and yet no court, jury, or commission could satisfactorily say and demonstrate that it was so excessive as to amount to a rebate.

The CHAIRMAN. Do you think that the abuses, preferences, advances, switching charges, elevator charges, and terminal charges can now be corrected by the law as it is? If not, what suggestions would you make in the way of amendment so as to reach these particular abuses?

Mr. CLEMENTS. The difficulty is illustrated in this: Take the icing business, for instance. Undoubtedly there may be some allowances made for the service. Icing is necessary to protect certain property in transit. What shall it be? Shall it be the bare cost of the ice, or shall there be something added for the service and for the other incidental expenses? And if so, how much? It becomes a matter of proof in the case. One jury would think one amount, and another jury would thing another amount was correct; and one commission might think this amount was correct, and the court another amount. Unless there can be some uniform rule to cover all that ought to be covered by this extraordinary service there will always be discriminations as long as the rule is flexible. We have not altogether agreed

about that. Some of us have thought that this matter might ultimately be reached, under the present Elkins law, as a discrimination, but it is a vexed question, and it will be litigated to the end.

The CHAIRMAN. Naturally, Congress wants to have the law put in such shape as to correct and prevent these abuses. Having regard to your experience and constant study of these matters for a number of years, what specific amendment would you recommend to be made to the present law to better prevent and punish all these abuses?

Mr. CLEMENTS. I can not think of anything better than to require the carrier over whose road the cars run—or the car lines, if you can make them subject to the law as a carrier—publish their rates like the railroads publish freight rates.

The CHAIRMAN. If you could take time, Judge Clements, to write out and send to us some specific amendment to a particular section of the Elkins law or the original law, the committee would be glad to have that. We should be glad to have it either from you or from any member of the Commission. Our desire is to strengthen the law so as to reach these abuses and stop them entirely.

Mr. CLEMENTS. If you desire, we will undertake to frame a suggestion of that kind. Of course, I can not do it here. It requires a good deal of ingenuity to make a law that will do enough and not too much.

The CHAIRMAN. I draw your attention to these specific abuses, and the committee will be glad to have any amendment proposed by you or the Commission to cover the subject.

Mr. CLEMENTS. I have no doubt all the members of the Commission will be glad to take time to do that.

The CHAIRMAN. In the direction of correction of these abuses, could a more uniform system of bookkeeping be devised and adopted by the railroads for showing the business of the roads? I mean a system that would enable the officers or anybody to examine them and detect wrong.

Mr. CLEMENTS. I am not an expert in the business of bookkeeping, but it has always seemed to me that if every road should be required to keep the same kind of books so that an examiner could go into a railroad office and find every class of items on the same book in each office and have books enough to cover the business, it would be a great facility afforded if the papers and vouchers could be entered, and that it would serve sometimes to uncover a rebate—not always.

The CHAIRMAN. You would recommend that these books be open at all times to inspection by a Government railroad examiner?

Mr. CLEMENTS. I certainly think that would be a great check on these evasions. The Commission now has the power to investigate under the decision of the Supreme Court—to call for the production of books and papers—but it must call for something definite. It does not know what to call for until it has found out, and does not know the number of the voucher or what book to call for, and if we call for all the books wanted to make a rambling search, then we have a wagonload of books, and we would not know where to look for anything. The Commission would be a year in examining those books, and even then might not find what it wanted. In the meantime it would be unreasonable to have those books out of the custody of those in charge of the railroad business in their offices.

The CHAIRMAN. Do you agree that the long and short haul clause of the original Cullom law, as interpreted by the Supreme Court, is just and fair to the shippers and to the public, or would you amend it; and if so, in what particular?

Mr. CLEMENTS. It stands now just as it stood before the law was passed. There never was a time, so far as I know or have any belief, when the railroads ever wanted to or did charge more for a short haul than a long haul, except where it met competition at the long-haul point. Inasmuch as it is permitted to do that in its own discretion in the first instance, and on its own judgment of the circumstances and conditions, it may take into account market competition—competition of railroads and competition of water, any kind of competition—and they now do exactly what they did before the law was passed in certain territory in this country: They judge of it and decide that there is competition at the far point, and they meet the rate in force there and add the local rate to it, either beyond or back. If anything that was being done before the interstate-commerce law was passed was in that respect wrong, it is still wrong where this practice prevails. But on that point I want to say that when the interstate-commerce law was passed there was what almost amounted to a revolution in readjustment of rate charges and classifications. A great many of the roads had their own classification. There were numerous classifications in the country, but they are substantially brought down to the three which now prevail and that simplifies the situation very much. There was a general overhauling of rates in this territory between the Ohio River and the Potomac and the Lakes, and in New England, and out as far as Chicago, perhaps, or the Mississippi River. There is now but an occasional case of that practice of charging more for the short haul than for the long. The roads went out of that business when the law was passed. I think they want to observe the law. I do not think they want to introduce the practice again where it has been abolished.

The CHAIRMAN. Would you advise, if it can be effected, that the through railway and ocean rates be subject to regulation?

Mr. CLEMENTS. You mean across the ocean?

The CHAIRMAN. Yes; say from Chicago to Liverpool. In the first place, do you think it can be done, and secondly, would you advise it?

Mr. CLEMENTS. I should think that would be a very difficult thing to do.

The CHAIRMAN. If it can be done by law, would you advise that it be done?

Mr. CLEMENTS. I should hesitate about that. I do not know.

The CHAIRMAN. As I understand it, the through export rate to Europe and the through import rate, we will say to Chicago, are often less than the rate from New York to Chicago. Do you think that is fair and in the interest of the public, the shipping interests of the United States and of the producers?

Mr. CLEMENTS. It undoubtedly seems to me that there should not be such a wide discrimination as that. It has always seemed to me that it would be healthful to have some competition in this country from other countries. I have always been of that school, but I am not a radical in that respect.

The CHAIRMAN. Do you mean as to import or export?

Mr. CLEMENTS. As to import. I am speaking of that particularly, because that is a matter that has several times been brought to our attention. There is the rate, which was brought to our attention, from Belgium to Chicago, being less than from Pittsburg to Chicago. That has never seemed to me to be a reasonable adjustment. There was the Import Rate Case, where freight was brought from some point in Europe through New Orleans for San Francisco, where the rate was three times as much, as I remember it, from New Orleans to San Francisco as the rate from Liverpool to San Francisco through New Orleans. The Commission decided that that was a violation of law, an undue discrimination; but on this ground of competition the Supreme Court said that the railroad leading from New Orleans to San Francisco had a right to make it, so as not to go out of that business; that it had to meet water competition at San Francisco.

The CHAIRMAN. Does it not have the practical effect of distributing business, decentralizing business?

Mr. CLEMENTS. To do that?

The CHAIRMAN. Yes.

Mr. CLEMENTS. I think it promotes competition.

The CHAIRMAN. That is what I mean.

Mr. CLEMENTS. Sometimes it results in unjust discrimination.

The CHAIRMAN. Does it not help interior towns as against great ports and cities?

Mr. CLEMENTS. I have no doubt it does, but it is believed by the local manufacturers that it hurts them.

The CHAIRMAN. In what case?

Mr. CLEMENTS. At Pittsburg.

Senator DOLLIVER. Does that always depend upon water competition?

Mr. CLEMENTS. Not altogether; no, sir.

Senator DOLLIVER. I notice it is said by the pottery people at East Liverpool, Ohio, that pottery is sent to New Orleans through Denver at a through rate from Liverpool, for less than the rate from East Liverpool to Denver.

Mr. CLEMENTS. There are many such cases.

Senator DOLLIVER. That would seem to require some other explanation than water competition.

Mr. CLEMENTS. It is railroad competition in a large measure, just as was demonstrated in this Glass Case that we had. A railroad from the Gulf did some business in Chicago, and the railroads from the Atlantic Seaboard wanted it, and they undertook to take a hand. This was rail competition to the interior. Of course the Canadian route was in that case, but it was mostly water competition.

The CHAIRMAN. How long has the Commission been giving attention to this abuse of division of freight money between terminal companies and the railroads?

Mr. CLEMENTS. It commenced that in the Brimson Case.

The CHAIRMAN. In 1892?

Mr. CLEMENTS. In 1892 or 1893, but it had investigated matters of that sort before.

The CHAIRMAN. The Supreme Court held that Brimson must testify, and that gave you a pretty free hand.

Mr. CLEMENTS. Yes, sir.

The CHAIRMAN. Did you follow that up?

Mr. CLEMENTS. No; that case got so old before it was decided and conditions had so changed that we did not go further with that. We conducted a great many other investigations successfully under that ruling.

The CHAIRMAN. With a view of getting this before Congress fairly, have you any case that you have prosecuted to final judgment to correct the evils growing out of the division of rates?

Mr. CLEMENTS. The Commission has reported upon matters of that sort at Chicago and at St. Louis, has made recommendations about it, and has sent the testimony to the Department of Justice in respect to one of these matters.

Senator KEAN. That was only lately?

Mr. CLEMENTS. Within a few months.

Senator KEAN. Since Congress adjourned?

Mr. CLEMENTS. Oh, no.

The CHAIRMAN. You have that now under consideration?

Mr. CLEMENTS. Yes, sir; I do not know exactly the status of it, but we have done what we could about it.

The CHAIRMAN. I believe you are investigating the refrigerator car abuses now in Chicago?

Mr. CLEMENTS. Yes, sir.

The CHAIRMAN. Then I do not want to inquire about that. But before this have you ever directed your attention to these abuses, and have you taken action?

Mr. CLEMENTS. The Commission has several times reported the condition of things in regard to the car lines.

The CHAIRMAN. To the Attorney-General?

Mr. CLEMENTS. No, sir; to Congress, and referred the matter—the question as to whether or not they were subject to the interstate law in their charges.

The CHAIRMAN. Has anybody refused to testify in those cases?

Mr. CLEMENTS. I think one of the employees of the Armour Car Lines or Armour & Co., I forget which it was, declined to answer last fall; but we were doubtful as to whether they ought to be required to answer in that case.

The CHAIRMAN. Was that doubt only about the law?

Mr. CLEMENTS. No; we were doubtful as to whether the question was proper or pertinent.

The CHAIRMAN. On the ground that the law was not sufficient?

Mr. CLEMENTS. No, sir.

The CHAIRMAN. What the committee wants is to make the law effective to reach these abuses.

Mr. CLEMENTS. I do not think anything more can be done. The Supreme Court has decided in the broadest way that the Commission has the right to compel testimony upon this question. I do not know how that can be accomplished so long as the Commission can not punish. The Commission is not a court, and of course when a witness declines to answer, we have to stop proceeding and wait until we can get a decision from the court, and then if the case goes to the Supreme Court we have to wait until it decides. I do not know anything that Congress could do to cure that, so long as these matters are conducted before a commission that can not exercise any judicial authority over the witnesses and punish for contempt.

the other day, they have met the water rates in the interior, so that the boats do not do very much.

Senator NEWLANDS. You gentlemen are attempting to administer this law as it stands, and you find difficulty in doing it, and we are now trying to find out what improvements of the act are necessary to be made in order to enable you to enforce the law.

Mr. CLEMENTS. I think you have covered about those which the Commission has thought are necessary to give effect to its purposes. I ought to say on this matter about private car abuse and terminal abuse, and particularly the abuse about the terminal lines, that that is a matter that has grown up much more intensely and to an aggravated degree, in my judgment and observation, than it has ever been before, since the Elkins Act, since outright rebates have stopped. These other devices have crept in.

Senator CULLOM. They have made up new styles of rebates?

Mr. CLEMENTS. Yes.

Senator NEWLANDS. Is not that always the case?

Mr. CLEMENTS. Yes; when the water is dammed up one way, they find some other way, if they can do it lawfully, if the desire is there and it is practical. That is human nature; but the Elkins Act is an act against all forbidden discriminations.

Senator NEWLANDS. You do not pretend to say that the passage of the Elkins Act was a bad thing to do?

Mr. CLEMENTS. Not at all. We have said that it has had a tremendous effect in the diminution of these abuses. How long that will last is a matter to be determined. When the Cullom bill was passed, for twelve or fifteen months there was but little abuse of these matters. It grew up gradually afterwards, and almost every 1st of January, from that time down to this, these railroad gentlemen get together and make a gentleman's agreement that they will quit and reform and turn a new leaf and not do it any more. They break down again and make a resolution again. They are now under a good resolution, and I have not a doubt in the world that the practice has been greatly diminished since the Elkins Act was passed and since these injunctions were obtained.

And so much has been said here time and again to the effect that the Commission had not invoked the Elkins Act or undertaken to exercise its duties and powers under that, that I would say it is wholly unfair, because when this exposure of wholesale rebates was made in January, 1902, the Commission promptly passed the matter over to the Department of Justice and asked to have proceedings instituted to enjoin and stop it, and any other proceeding that could be instituted under the law. That was done in 14 cases against 14 of the leading railroads in the West and in the trunk lines. The injunctions were granted temporarily, and before the matter was passed upon, while it was before the court, the Elkins bill was passed, and, as I understand it, those injunctions hold good now, but they hold by virtue of the Elkins law, which came in afterwards. So it is not fair to say that because we anticipated that when it was a doubtful remedy, as Mr. Peck said, it was the most available thing, and it was another additional opportunity the Commission was afforded to reach these matters. I hold that exposure had a good deal to do with the passage of the Elkins bill, if I may be permitted to say so. It exposed a condition of things which suggested the act.

Senator NEWLANDS. The first proceeding for injunction was under the original act?

Mr. CLEMENTS. Yes.

Senator NEWLANDS. And the Elkins law was passed before the matter was determined?

Mr. CLEMENTS. Yes. Then there was another suit begun directly under the Elkins Act against the Chesapeake and Ohio Railroad. That makes 15 cases.

Senator DOLLIVER. What was the subject-matter of the suit?

Mr. CLEMENTS. It was coal rates from Virginia points into New England, where the Chesapeake and Ohio undertook to deliver coal to the New York, New Haven and Hartford road, I believe, in New England at a price which was less than the freight rates from the mine to the seaboard and the rate from there to New England.

Senator DOLLIVER. What form did that take?

Mr. CLEMENTS. It was a contract between the Chesapeake and Ohio Railroad to deliver a certain number of tons—up in the millions—within a certain period, and they did deliver a part of it, and were proceeding to deliver the balance, while their published rate and the rate beyond to New England points made it impossible for them to do it on the terms of the contract, and the competing miners complained of it.

Senator DOLLIVER. Have you sought to enjoin a discrimination between two localities?

Mr. CLEMENTS. I do not think that ever has been made where the discrimination was on the published rate, except in the case referred to the other day, that case of some years ago, involving Wichita and Missouri River points; and referring to that Elkins Act, you will find that the words are "where the Commission has reason to believe" that there is a violation of the law it may ask for an injunction. I mean discrimination that is forbidden by law. Now, it has been said here that the Commission need not wait for an investigation and play like a court and investigate and find out the facts, but just walk right into court and begin a case, that that would be sufficient, if it was permitted to do that in regard to the correction of an unreasonable rate. Now, the Commission acting in good faith must have the belief before they can go into court and accuse a road with violating the law. There must be some reason for that belief. Now, must it inaugurate the practice of taking up every complaint thrown at it from every source and saying that a complaint is here and we will institute a suit? I do not think that would please the Louisville and Nashville road or any other road. I do not think it would be fair or just to the Commission, and if it is going to inform itself so that it may have a belief based on reason, how can it do that better than by ascertaining the facts in the presence of both parties? Shall it go and see one of the parties in a fence corner and get one side of it and form a belief on that and institute proceedings against a road? I do not think so.

Senator DOLLIVER. Are not most of these discriminations which are published in the rates obvious?

Mr. CLEMENTS. They are obvious as discriminations, but whether they are reasonable or unreasonable, due or undue, is not so obvious as the discrimination. The third section condemns undue and un-

reasonable discriminations, but there are many discriminations which the court has said, and which, according to the facts and the law itself, it is manifest are not necessarily illegal because they are discriminations. They are due and reasonable because due to circumstances and conditions which in many cases justify them, as the courts have held and as the Commission has found.

Senator KEAN. How long have you been a member of the Interstate Commerce Commission?

Mr. CLEMENTS. About thirteen years.

Senator KEAN. You were a member in 1889?

Mr. CLEMENTS. No.

Senator KEAN. In 1899?

Mr. CLEMENTS. Yes.

Senator KEAN. Did the Commission, on the 8th day of December, 1899, enter a formal order instructing its secretary to cooperate assiduously with associations to secure the passage of an act through Congress?

Mr. CLEMENTS. Well, there was an order of that sort entered on the minutes by the Commissioners that were present at that time.

Senator KEAN. Will you kindly give us a copy of that?

Mr. CLEMENTS. I haven't it here.

Senator KEAN. Could you produce it?

Mr. CLEMENTS. Yes. That is some five or more years ago. It was gone over here with Mr. Wolcott on this committee when he was a member of it and was fully discussed.

Senator KEAN. Did your secretary, under date of February 3, 1900, issue a circular letter in his official capacity to associations and shippers to write to Senators and Representatives in favor of the passage of a bill?

Mr. CLEMENTS. I do not know about that. I can find out.

Senator KEAN. If you would give us that we would like to have it. I have here a copy of a publication and the substance of testimony offered at hearings held by the Interstate Commerce Commission of the United States, sent to the House of Representatives, in favor of amending the interstate-commerce act, published by the interstate-commerce law convention. You had a large number of copies, did you not, in the office of the Interstate Commerce Commission last winter?

Mr. CLEMENTS. I do not know about that.

Senator KEAN. Given out with your report?

Mr. CLEMENTS. I do not know about that. It may have been done. What year is that that you refer to?

Senator KEAN. Published in the year 1904.

Mr. CLEMENTS. I have no knowledge of anything of that kind.

Senator KEAN. At the close of Mr. Prouty's statement the other day it was suggested that the committee would like some information as to the statistical work of the Commission. Will you be kind enough to tell me who has charge of that work?

Mr. CLEMENTS. Prof. W. C. Adams, of Ann Arbor, Mich.

Senator KEAN. Is he a professor in the Michigan University?

Mr. CLEMENTS. Yes.

Senator KEAN. Of what?

Senator DOLLIVER. He is the head of the school of political econ-

omy, I think. He is one of many professors of economics, but I think he is the head of this college or school of economy.

Senator KEAN. How long has Professor Adams had charge of the statistical work of the Commission?

Mr. CLEMENTS. He has had it longer than I have been on the Commission—I suppose, practically, from the beginning. Judge Cooley brought him there. He selected him, practically, as I understand it.

Senator KEAN. Do you think that if the Commission had the power to fix a rate that would do away with all rebates?

Mr. CLEMENTS. No.

Senator KEAN. Do you think it would add to it?

Mr. CLEMENTS. I do not know that that would materially affect the rebate question.

Senator KEAN. Do you think it would prevent discrimination?

Mr. CLEMENTS. Well, it might be in some cases that it would operate to do so. The Commission has called attention to it as it has thought a proper thing to do, mainly for the correction of excessive and unreasonable rates. It is not contended that that would add to the remedy against paying rebates.

Senator KEAN. I have no further questions.

Mr. CLEMENTS. Since the matter of the order made five years ago, or something like that, has been brought up, I would say that I have had it brought to my attention in the last few days by what was shown to me as a printed circular, which is being scattered over the country broadcast, and a copy of which I have here, and which shows that a campaign is on hand to secure the organization of railroad employees to protest against any legislation which might affect this matter.

Senator KEAN. I merely call your attention to these to contradict your statement in regard to what the Commission had done.

Mr. CLEMENTS. How does that contradict the work we have done?

Senator KEAN. Your statement as to what the Commission had done in regard to legislation. That is all.

Mr. CLEMENTS. I do not see how that contradicts anything that I have said.

Senator DOLLIVER. I was interested, Mr. Clements, in a statement you have just made that the main operation of this power to revise rates would be in respect to rates that are exorbitant or unjust in themselves, rather than as respects rebates and other discriminations. I would like to go a little further into that. Would you expect this power to revise rates to be confined to the power to readjust a set of rates complained of?

Mr. CLEMENTS. Well, I do not see where else it could be applied unless there was some power given in respect to fixing the minimum rate, for the correction of a discrimination, because if the Commission is given a power of that sort, for the correction of discrimination, and it orders that the discrimination cease, that might be done by raising one rate or lowering the other.

Senator DOLLIVER. So that the mere power to fix the maximum rate would not enable the Commission to handle the question of discriminations at all?

Mr. CLEMENTS. I do not think it would.

Senator DOLLIVER. Would it be agreeable to the opinion of the

Commission to narrow this power to revise rates in cases where the rates are complained of as unjust and unreasonable in themselves?

Mr. CLEMENTS. You mean to fix the minimum?

Senator DOLLIVER. I mean to confine the power of supervising the rates to cases where a rate is complained of as unjust and unreasonable in itself.

Commissioner FIFER. The exercise of the power?

Mr. CLEMENTS. I have never thought of it as a suitable thing for any other purpose except for the correction of an excessive rate.

Senator NEWLANDS. You mean an excessive rate per se or excessive by comparison?

Mr. CLEMENTS. Excessive in itself.

Senator FOSTER. How does the number of complaints, say, within the last two years compare with the years preceding?

Mr. CLEMENTS. There have been a good many more in the last year or two than in the same length of time ever before.

Senator FOSTER. What is the nature of those complaints generally?

Mr. CLEMENTS. They often complain of the excessiveness of the rates, and they frequently complain of the relation of the rates resulting in the discrimination as between places. Most of them are in one class or the other of those two. It is an unjust relation resulting in an undue and hurtful discrimination, or that the rate is excessive. Of course, these numerous increases in rates that have been made in the last three or four years have resulted in a good many complaints of the latter class.

Senator FOSTER. Since the Elkins law has been in effect the complaints have multiplied instead of decreased? Is that the case?

Mr. CLEMENTS. I think that is true.

Senator NEWLANDS. They were caused by the passage of the Elkins law?

Mr. CLEMENTS. I should not say so, and I should not think so—coincident with it.

Senator FOSTER. What is the difficulty that your Commission experiences in the enforcement of the law?

Mr. CLEMENTS. When the Commission investigates a complaint as it is required under the law to do, and makes its report and findings of fact, and its conclusions, and finds that there is a disobedience of the law, in its judgment, it makes an order that the carriers cease and desist from that. That has no effect at all until the Commission can go into court affirmatively and obtain a judgment or decree to that effect.

Mr. FOSTER. What remedy would you suggest to correct that defect in the law, or that want of power in the Commission?

Mr. CLEMENTS. Well, I have always thought that when a rate was found to be unreasonable, that public authority ought to be able to find what is the reasonable rate and order the carriers to cease and desist from charging any more than the reasonable rate in that case, and that that ought to go into effect after a reasonable time within which the carriers may apply to the courts if they desire to do so.

Senator KEAN. Does that mean a maximum and a minimum?

Mr. CLEMENTS. I have never advocated a minimum rate.

Senator FOSTER. Have you finished?

Mr. CLEMENTS. That is all, that the rate go into effect, say, in thirty days or forty days after the Commission has made its order. That would give forty days, if the carrier thought it was an unreasonable order and ought not to be enforced, within which the carrier might file a bill against it, and if there is any ground on which it can be held up, they can get an order to that effect. There is not the slightest objection in my judgment to the question of what the Commission has done, the propriety of it and so on, in going to the court, if there was any way in which the court can act upon it; but as the law has been interpreted the courts can not legislate. The fixing of a rate for the future is legislation, and it seems to me that if the rate for the future is to be fixed, it must either be done directly by Congress or by a board that is authorized to do a legislative act to that extent, and I do not see how you can confer any power on the court to do any more than to take jurisdiction on the matter on the complaint under the Constitution of the United States; but if the rate is one that is confiscatory, the courts can enjoin it and will do so.

Senator FOSTER. Now, how will these abuses of the railroads which are complained of be abated or corrected by conferring this power upon the Commission to revise the rates of the railroads?

Mr. CLEMENTS. You ask how it will be abated?

Senator FOSTER. How would these alleged evils and wrongs of the railroad be corrected by conferring this rate-making power upon the Commission.

Mr. CLEMENTS. You mean discrimination?

Senator FOSTER. Any of the abuses.

Mr. CLEMENTS. If the Commission is authorized to investigate a complaint that a rate is unreasonable, and it does so and finds the facts to that effect, and is authorized to name what is the fair and reasonable rate, and the carrier is ordered not to go beyond that and is required to obey that, that would be a correction of that excessive rate. It would not only condemn the rate to being corrected, but it would condemn it down to the point of what was reasonable in the judgment of the tribunal.

Senator FOSTER. You would not only have to clothe the Commission with the right and the power to declare a rate unreasonable, but also to declare what is a reasonable rate, and then further to declare that the findings of the Commission shall go into immediate effect.

Mr. CLEMENTS. That is what I think.

Senator FOSTER. If the law did not authorize the finding of the Commission to go into immediate effect, then you think there would be no relief, no practical relief, because the condition would remain just as it is to-day?

Mr. CLEMENTS. Yes.

Senator FOSTER. Suppose that the law should authorize the Commission to examine into these complaints and the Commission should find the complaint well founded and the charge excessive and unreasonable and should order that the railroads should fix a reasonable rate within a reasonable time or fix another rate within a reasonable time, and in the event that they failed to fix a reasonable rate within that time that the Commission would then be authorized to go into court and enjoin them from carrying out their excessive rates.

Mr. CLEMENTS. If I understand you, the proposition is, if the Com-

mission was authorized only to condemn the rate that was in issue and then recommend that the carriers fix a reasonable rate after the Commission has named them——

Senator FOSTER. Yes.

Mr. CLEMENTS. And the matter was left that way for a period of time within which if they did not do it the Commission could make another order and say what is reasonable—or, what is the next step?

Senator FOSTER. The next step is that the Commission could mandamus them to fix a reasonable rate.

Mr. CLEMENTS. I do not see how they could go any further than to enjoin them from charging the rate which they had been charging and which it condemned, because if the court said they must cease and desist from charging that, and in addition to that should order them to cease and desist from charging any more than the court found to be a reasonable rate, then the court would be doing exactly what the Commission undertook to do in the Maximum Rate Case, and in the same way would be making a rate for the future, as the court held that the Commission was doing then; and I do not understand that the court can do a legislative act or that Congress can confer upon the court such authority.

Senator NEWLANDS. In such a proceeding suppose the Commission should have the power not only to condemn the existing rate, but to find what a reasonable rate was, and the law should provide that the Commission itself should proceed against the corporation to prevent it from collecting a rate in excess of the rate that was determined reasonable, could not the proceeding be so expedited by the law as to result in comparatively speedy relief?

Mr. CLEMENTS. You mean if the Commission made no order as to what the rate is to be, but simply condemned the rate that was in existence?

Senator NEWLANDS. No; condemned the rate that was in existence and declared what the rate should be, and then instead of having that go into effect immediately requiring the Commission to commence a suit against the corporation to enjoin it from collecting any rate in excess of that amount. That would accomplish the same result as the other; but I understand your claim is that it would result in delay.

Mr. CLEMENTS. What would be the status of that order by the Commission? Is that simply a recommendation of a rate or is it a rate that the Commission is authorized to declare as the rate?

Senator NEWLANDS. It is the rate that the Commission is authorized to declare. Then the question comes up as to its enforcement.

Mr. CLEMENTS. The difficulty of that is that the Commission have been required to make an investigation and has found the rate unreasonable and has found a reasonable rate, and that is prima facie taken as correct—under the present law that is the condition. Then the Commission must assume the onus of going into the court where the matter will be tried de novo; and such proceedings in equity, as all know, relating to matters of that sort, not only in regard to questions of this kind, but also all other equity proceedings, are tedious. It is particularly so in respect to these cases. The carriers want to introduce witnesses in different places and many witnesses from different parts of the country to testify about rates and com-

parative rates; and, in the very nature of things, if this is to be a thorough investigation either before the Commission or before the court, to obtain all the facts that the parties at interest think have a bearing by way of comparison, and one rate with another, and the conditions, and the changing conditions, etc., it is not a matter that could be expedited.

Senator NEWLANDS. You think it would necessarily take a long time?

Mr. CLEMENTS. It would necessarily take a long time.

Senator NEWLANDS. How long do you imagine?

Mr. CLEMENTS. That depends on the condition of the docket in the particular court.

Senator NEWLANDS. Suppose the law provided for expediting the cases in the lower court and in the higher court also?

Mr. CLEMENTS. It would be a mere guess that would be of hardly any value. I would not undertake to guess it.

Senator NEWLANDS. What have you to say as to this, that if the rate which you declare is a reasonable rate should four or five years later on be upset by the court upon the initiative of the railroad, the railroad would lose the difference?

Mr. CLEMENTS. Well, if it was thought possible there can be some guard against that, but somebody must lose some amount in these matters. You can not have exact and equal justice in all these matters. If the rate is not put into force, and it is unreasonable before the litigation was commenced and afterwards, the shipper loses, and these cases would be very greatly expedited if the onus was upon the railroads to show that the order which the Commission made was unlawful. The matter would then be determined and the end of it reached much sooner than it will be when the onus is on the public to assume the burden through the Commission and through the courts.

Mr. CLEMENTS. If they thought it was a rate which they could not afford to put in, they would apply at once for an injunction and show the facts, naturally, and I do not think it is a hardship.

Senator NEWLANDS. Now, where the railroad seeks to enjoin a rate upon the ground that it is confiscatory, a preliminary injunction is often granted, is it not?

Mr. CLEMENTS. Yes

Senator NEWLANDS. Do they have to give bonds in such proceedings?

Mr. CLEMENTS. I think they usually do, but I am not sure about that. I think that is a matter in the discretion of the court.

Senator NEWLANDS. Very well; then how is the shipper protected in such a case as that? The case may last for two years, and during all that time the unjust rates are collected.

Mr. CLEMENTS. The trouble about that is that it is impossible to protect the people injured by the unjust rate, because if a bond were required and an accounting made and the difference between the just rate and the unjust rate finally paid into court by the railroad, after that question had been settled the people who ship would be the ones to stand in the place to receive the reparation—the men who had shipped and who had the bill of lading and can show their names as shippers. They have bought the grain or the cotton or whatever

it may be on the price of the going rate in effect when the shipment was made. They have sold on the basis of that rate. They have disposed of the matter. The rate has followed it on down and finally rested upon the consumer, who buys and consumes the product. He would have no standing in court, for he did not ship a bushel of grain or a bale of cotton.

Senator NEWLANDS. Under these cases the reparation would not go to the right men.

Mr. CLEMENTS. It would go to the men who had already protected themselves, and the persons really injured would have no standing. That is the peculiarity of this business which singles it out from other matters of litigation, that there can be no adequate protection against the wrong of an unjust rate, except to make the rate right. After the rate has gone into effect it is impossible to find those who were injured and to distribute it among them.

Senator NEWLANDS. At that rate, if the rate fixed by the Commission is determined two or three years afterwards not to be reasonable, then the railroad loses and you could suggest no method by which it could recompense itself.

Mr. CLEMENTS. I do not know any method by which it could be done except to expedite the matter and have it determined as soon as possible. There must be some injustice in all these matters, as I have repeatedly said. There is no way, in my judgment, by which there can be exact justice done in relation to these matters. They are too complex.

Senator NEWLANDS. The court can only take into consideration the question as to whether or not the rate is confiscatory. Is there any margin of difference between a confiscatory rate and a reasonable rate?

Mr. CLEMENTS. It has always seemed to me if the rate was made unreasonably low to the extent that it affected the earning capacity of the property, by invading a just and reasonable rate, it had begun to be confiscatory from the start.

Senator NEWLANDS. Just as soon as it falls below the standard of what is reasonable, that moment it begins to be confiscatory.

Mr. CLEMENTS. To that extent it begins to invade the right of the property.

Senator NEWLANDS. Is there any record so considered?

Mr. CLEMENTS. I do not know about that. Courts look at the substance of things, and I think that will be the final outcome of it.

Senator NEWLANDS. You think that is the trend of the decisions thus far?

Mr. CLEMENTS. I think that is the reason and justice of the matter.

Senator NEWLANDS. Now, as to the elasticity of rates, great stress has been laid upon that by the representatives of the railroads, and the contention is that when the rate has once been established by the Commission and approved by the court, it can not be changed after that, and that it is desirable to leave a free hand somewhere in adjusting these rates. How about that?

Mr. CLEMENTS. I have no idea that there would be any trouble about that. A decree of that kind ought never to be like a judgment or decree of a court, final and conclusive. It must of course be administered upon the idea that conditions and circumstances may

change, and, therefore, when they do substantially change and become different from what they were, when the rate was made, there is a basis for a change, a just and reasonable basis for a change in the rate.

Senator NEWLANDS. To whose judgment would you leave the determination as to whether or not there was a change in the circumstances and conditions that would justify a change in the rate that had been fixed by the Commission and approved by the court?

Mr. CLEMENTS. It might be safe to require a hearing of the matter and approval by the Commission or by whatever tribunal acted, but I have no idea that, if it was left to the discretion and judgment of the carrier, the carrier would undertake to put in another rate without a reason for it, because there would be a basis immediately for a proceeding, and it would be courting trouble if it did it.

Senator NEWLANDS. So that you think we can safely leave that matter to the discretion of the carrier?

Mr. CLEMENTS. I think after it had been put in that the carriers as a rule would not undertake to trifle with the matter or to change the rate unless they had a substantial reason for it. They would have to justify it in a short time before the court again, and it would be folly, unless there was a substantial, bona fide reason for doing it, and I think it is perfectly safe to leave it to the carriers to judge of that, subject to review.

Senator NEWLANDS. Now, as to the cases where the carriers refuse to accept the orders of the Commission. Your procedure then is to turn the matter over to the Attorney-General?

Mr. CLEMENTS. Yes; the law is that the Commission shall request the United States district attorney to institute the next proceeding, and he shall do it under the direction of the Attorney-General. For convenience to both the Department of Justice and to ourselves, and that the Attorney-General may be notified what the district attorney has been asked to do, these matters as a matter of practice are sent through the Department of Justice, and then the district attorney is directed by the Attorney-General from the beginning.

Senator NEWLANDS. Have you found that there has been any delay in the Attorney-General's office regarding the matters turned over to that Department?

Mr. CLEMENTS. I have not.

Senator NEWLANDS. There is no complaint upon that score?

Mr. CLEMENTS. No.

Senator NEWLANDS. No complaint that your applications have been pigeonholed by subordinates in that office?

Mr. CLEMENTS. None at all that I know of.

Senator NEWLANDS. And as a rule during your experience the Attorney-General's office has acted expeditiously?

Mr. CLEMENTS. Yes; there is no delay and I have never heard of any delay in respect to that. These injunction cases were instituted by bills drawn in the Department of Justice. They were instituted promptly and the matter was taken up promptly and attended to. There have been sometimes matters that have been sent there about which there was to be some further consultation or inquiry, where the proceeding has not been instituted at once, but I do not know that that is being done except where there is a good reason for it.

Senator NEWLANDS. In the Interior Department, I believe, they

have an assistant attorney-general, have they not, who attends to the business of that Department?

Mr. CLEMENTS. I think there is an assistant attorney-general for the Interior Department.

Senator NEWLANDS. Would it not expedite the business of the Interstate Commerce Commission if an assistant attorney-general were deputized to act with you, if his office were in the same building?

Mr. CLEMENTS. I am sure it would. There are a great many questions of the drawing of complaints, and questions of law and consultations that ought to be referred to a lawyer specially in charge of the matter. It can be handled by one man much more easily than it can by a consultation between five who have other things to do at the same time.

Senator NEWLANDS. Then you would recommend that that be done?

Mr. CLEMENTS. I think it would be an improvement. I have no doubt.

Senator NEWLANDS. Now, as to rebates, I understand you to say that after the original Cullom Act was passed, there was a cessation of rebates for a year or more, and then they were resumed?

Mr. CLEMENTS. Gradually; yes, sir.

Senator NEWLANDS. And a cessation upon the passage of the recent Elkins bill.

Mr. CLEMENTS. Yes. It is often attributed to these injunctions. I think the whole thing went together. It was the availability of the proceedings under the law to stop those things.

Senator NEWLANDS. And you really rely upon the Elkins law to get those injunctions and make them efficient?

Mr. CLEMENTS. Yes.

Senator NEWLANDS. Now, don't you think that such a contingency that has occurred a year or more after the passage of the Elkins law will likely occur again and that these rebates will blossom out anew.

Mr. CLEMENTS. If the traffic falls off, and there is a scramble among the railroads for business, and the roads are hustling for it, I think there would be a tendency in that direction unless the matter is constantly watched.

Senator NEWLANDS. It is more likely to occur in a period of depression?

Mr. CLEMENTS. Yes. That has been the history of it.

Senator NEWLANDS. The whole policy of our law is to force these railroads into competition and then punish them for resorting to the usual methods that are used in those cases.

Mr. CLEMENTS. You have left them in a state of competition. I do not think they are altogether in that condition.

Senator NEWLANDS. What do you think about competition in railroading? Do you think it is a good thing to have as much as we have had, or do you think that this consolidation of railroads which has been going on has tended to efficiency and perfection of service?

Mr. CLEMENTS. There is no doubt about it tending to imperfect service in some ways. It may operate otherwise in some parts. Railroads are not competing with one another and making fast lines and good service and handsome cars to get business. That has been their method of advertising in competing with one another. When that incentive is removed the service would hardly be as good, I think.

Senator NEWLANDS. How about equality of service? Do you think it tends to equality of service?

Mr. CLEMENTS. If the roads would observe their published tariff, recognizing that the demands of the laws of the country are the first obligation resting upon them, and the revenue for their companies is the second, instead of reversing that, there would not be any trouble about rebates. They say they pay rebates because others do, and therefore the first thing to do is to save business and the next thing is to obey the law. Now, there will be rebates, of course.

Senator NEWLANDS. Now, so far as equality of service and equality of rate is concerned, where three railway systems, we will say, are serving ten States, each in active competition with the other, there is less likelihood of equality of rate and equality of service, and proportion of rate in such a condition of active competition, than where those three systems are consolidated into one road?

Mr. CLEMENTS. Undoubtedly.

Senator NEWLANDS. So that consolidation tends toward equality of service?

Mr. CLEMENTS. Steadiness of rate and equality of rate and a higher grade of rates.

Senator NEWLANDS. It might tend, in your judgment, to diminish the character of the service?

Mr. CLEMENTS. Yes; and certainly tend to prevent reductions in rates that otherwise would be made.

Senator NEWLANDS. Now, as to your Commission, so far as rebates are concerned, a good deal of detective work is required.

Mr. CLEMENTS. A good deal; yes, sir.

Senator NEWLANDS. So that we have united in one Commission the men who are to be both the judges and the detectives in order to make them efficient in both branches.

Mr. CLEMENTS. Well, the members of the Commission do not themselves go out as detectives simply to find out about these things. We employ agents to do that to a limited extent, and when we get what seems to be evidence of the violation of the law, we utilize that by making a public inquiry or by pursuing through the detective an extended quiet inquiry, and utilize it in whatever way seems to be the wisest to ascertain the facts and correct the wrong.

Senator NEWLANDS. Do you think it would be wise to segregate those detective duties from the present members of the Commission?

Mr. CLEMENTS. I have never thought there was very much in the protest that the Commission was the detective, prosecutor, jury, judge, and executioner. I have heard all that said. The Commission has no personal interest in these rates, no member of it has, and it seems to me as if it is an objection to form rather than to substance. Of course, if the work of detection and investigation in the hearing of complaints is to become so that it requires more work than the Commission can do, there might be a reason for adding to it for that purpose, but I have never thought there was much substance to the objection that these things were concentrated in the same persons for the reason that they have no interest whatever except to enforce the law as between the parties in the interests of the public.

Senator NEWLANDS. Do you think that a man who is trained to discharge quasi judicial duties, the highest duties that belong to this

Commission, has that class of mind which enables him to prosecute successfully detective work?

Mr. CLEMENTS. No. If you want to make a ferret of him, I do not think he is suitable for both places.

Senator NEWLANDS. Now, as to the through rates, you would be called upon to make a division of the rate, would you not?

Mr. CLEMENTS. In some cases we have thought that the effect could not be given to the correction of a wrong rate and the substitution of a just one without that power.

Senator NEWLANDS. And you would expect that power to be given?

Mr. CLEMENTS. I think that is incident to the other.

Senator NEWLANDS. What do you think of a special court?

Mr. CLEMENTS. Well, I have thought that a special court would probably be more expeditious than the miscellaneous courts all over the country; and if a court has this class of business to deal with and no other, that there would be this much about it: The matters would be expedited, and there are a great many things about this matter of rate making and about the testimony produced by witnesses in respect to it, traffic men and others, which at first is much more bewildering to a man who has only heard one case or hears one only now and then, than it is to a person who is dealing with it all the time, who has been told repeatedly that it is full of peculiarities and changing conditions, and that practical experience and association with it is necessary to have any judgment about it at all. I think it would greatly aid a court in the course of a few months or years if it became familiar with all these questions and familiar with the witnesses who testify about these matters and the methods by which they consider these questions in constructing their tariff, etc. I see no objection to a special court because it is dealing with a special matter, if it is constitutional to make such a court.

Senator NEWLANDS. Would you have such a court sit in Washington?

Mr. CLEMENTS. Washington and other places.

Senator NEWLANDS. Wherever convenience would require?

Mr. CLEMENTS. Yes; whatever would be the wisest.

Senator NEWLANDS. As to the constitution of the Interstate Commerce Commission, the number of its members, etc., do you think it would be advisable to have this Commission divided into branches, so that there could be one or more members of the Commission at each one of the rate-making centers of the country.

Mr. CLEMENTS. I have never thought there was any great advantage about that. I think that it has become understood that all members of the Commission, or even a majority of the members of the Commission, would not undertake to hear every case that arises. One must act in many cases and take the testimony, or two, as the case may be, in order to prevent delay about these matters.

Senator NEWLANDS. Now, it is contended that as it is, that under existing conditions, the rate-making is the result of the united judgment of a great many minds—the local agent at the local station, the freight agent, and, finally, the traffic manager, and that the rate-making is finally adjusted in five or six great centers in the country, and that it is essential that these men should be in touch with commercial conditions and should feel the commercial pulse. If that is

so, would not that consideration also attach to the Commission—that is, to have the power of revising and correcting these rates?

Mr. CLEMENTS. A general observation of that sort might afford some help, but if there is to be any power of that sort, the Commission has got to deal with it by the intelligent and thorough presentation of the matter by the parties interested.

Senator NEWLANDS. Do you think it would be an advantage to provide that a certain proportion of the Commission should consist of men who have been trained in experience in rate making as traffic managers or otherwise?

Mr. CLEMENTS. Well, I do not think it would be amiss to have some of that sort. A good many of the State commissions have provisions of that sort. I know in my own State one of the commissioners must be a lawyer, another a business or commercial man, and another a railroad man.

Senator NEWLANDS. And as a result of your experience, do you think we will ever have equality of rate and of service as between individuals and communities and proportionate rates as to commodities, until we have Government ownership?

Mr. CLEMENTS. I do not think you ever will have exact justice. I do not think anybody can construct the scales that will indicate what exact justice is.

Senator CULLOM. Do you think that exact justice would be brought about by the Government owning the railroads?

Mr. CLEMENTS. I do not see how that could be done either.

Senator NEWLANDS. I am not asking you about exact justice. Do you think we could more nearly approximate equality of service and equality of rates as between individuals and communities, and proportionate rates as to commodities under Government ownership than under private ownership?

Mr. CLEMENTS. The temptation to give rebates, of course, would be entirely eliminated, but somebody would have to judge as to what was a reasonable discrimination between places and commodities, in order to make a scale of rates, for the Government as well as for the carriers, and the judgment of the man might be defective. I have never thought that Government ownership was a wise proposition. It was on that question that I retired from the other wing of the Capitol some years ago, when the Farmers' Alliance required a man to say that he was for Government ownership and for the subtreasury, which I could not say; but there are many difficulties about that. What Government Department would determine what improvements were to be adopted in the way of new devices for the saving of life and for the enlargement of the business and for those many things which the interest of the corporations cause them to adopt after investigation, and with a view of increasing their revenue, and then, also, think of all the contracts that would be made, etc., and the army of employees. It looks to me as though it would build up a Government Department that would be unwieldy, full of corruption and abuse, and I need not enlarge upon that.

Senator NEWLANDS. As I understand it, the chairman has requested your Commission to bring in such specific amendments as you recommend?

Mr. CLEMENTS. Yes; I so understood; and we will do our best to suggest something to carry out the views which we have.

Senator NEWLANDS. That is all.

[Reprinted from hearings before Committee on Interstate Commerce, United States Senate, Friday, April 13, 1900, page 396.]

PROUTY EXHIBIT A.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of December, A. D. 1899.

Present: Hon. Martin A. Knapp, chairman; Hon. Judson C. Clements, Hon. James D. Yeomans, Hon. Charles A. Prouty, Commissioners.

The following proceedings were had, to wit:

AMENDMENT OF THE ACT TO REGULATE COMMERCE.

Cooperation with certain mercantile organizations to secure the adoption of amendments to the act to regulate commerce being under consideration,

It was unanimously voted to instruct the secretary to cooperate with the representatives of these organizations for the purpose of securing the adoption of necessary amendments, and particularly the passage of a bill which has been approved by such organizations at a meeting held in Chicago on November 22, 1899, and to that end to give the public information as to the present state of the law, and the necessity for amending it by distributing such reports, papers, and documents as are designed to accomplish that purpose, and to devote himself assiduously to such duty.

A true copy.

[SEAL.] EDW. A. MOSELEY, *Secretary*.

STATEMENT BY EDWARD A. MOSELEY, SECRETARY OF THE INTERSTATE COMMERCE COMMISSION.

Mr. MOSELEY. Mr. Chairman, I have to say but a word. In the course of the remarks which have been made here and elsewhere there has been a good deal said as to what the secretary of the Interstate Commerce Commission did. Whatever the secretary may do has nothing to do with the merits of this bill. While I am perfectly willing to assume any responsibility which may be put upon me, it is simply as executive officer of the Commission that I do anything regarding a matter of this kind.

That a strong feeling in favor of amending this law has been aroused by any action of mine I believe is absolutely untrue. In the course of the business of the office it is true that a letter was sent to many of the boards of trade of the United States, and it was also sent to a number of shippers who had complained to the Commission, and where the Commission, in justice to itself, was bound to inform them that as the law had been interpreted they could do nothing for them; and this is the extent to which the so-called circular has been sent out. The Commission has not begun to do an iota of what might have been done to arouse public attention to the condition of the act they are charged with the duty of enforcing.

Senator CHANDLER. Have you a copy of the circular?

Mr. MOSELEY. I have not with me, but I am very glad to have an opportunity of furnishing it and make it a part of the record.

There can be no desire for secrecy about anything which the Interstate Commerce Commission may do; all their acts are of record.

Senator CHANDLER. You had better do so and file it, because it is alleged that you urged boards of trade to impertinently urge Senators and Congressmen to do things in regard to this bill.

(The same is attached, marked " Moseley Exhibit A.")

Mr. MOSELEY. In regard to the gentlemen who have appeared before you, it is only fair to say that no one has ever been asked to come to Washington or appear before this committee by the Interstate Commerce Commission or by its secretary.

The CHAIRMAN. If there is nothing further the committee stands adjourned.

Adjourned at 2 o'clock p. m.

MOSELEY EXHIBIT A.

Inclosed please find copy of Senate bill No. 1439, introduced by Senator Cullom December 12, 1899, which embodies provisions amendatory of the act to regulate commerce. The bill is designed to give the Interstate Commerce Commission the authority intended to be conferred by Congress when the law was originally enacted.

A few railroad officials and some newspapers have charged that the Commission by recommending these amendments is seeking unlimited authority to make rates. This charge is entirely without foundation. The Commission neither asks nor desires to be invested with general rate-making power. It simply asks for authority to correct rates which have been previously established by the carriers in the full exercise of their rate-making power, when such rates are found by the Commission, after due notice, investigation, and full hearing, to be in violation of the act; and the Commission asks this because experience has demonstrated that there is practically no other way by which the public can be protected against excessive or unjustly discriminative rates.

It has been asserted in some quarters that the powers asked for in this regard would imperil the commercial interests of the country. This statement is altogether erroneous. On the contrary, the passage of this measure would conserve the interests of producers, manufacturers, and shippers generally, while protecting the rights of the carriers. On November 22, 1899, this bill was submitted to a convention composed of representatives of leading commercial and industrial organizations of the country at Chicago. There were present authorized delegates from—

The Millers' National Association of the United States,
The National Association of Manufacturers of the United States,
The National Business League,
The National Board of Trade,
The National Transportation Association,
The National Live Stock Association,
The United States Brewers' Association,
The Vapor Stove Manufacturers' National Association,
The National Hay Association,
The National Association of Freight Commissioners, and others.

After carefully considering the measure section by section it was approved by the conference. Since that time more than twenty other national business associations have expressed their approval of the bill. The shippers of the country, therefore, with the approval of the Interstate Commerce Commission, seek such amendment as will empower the Commission to proceed on the lines and to the ends contemplated by the original act. The language and phraseology of that act, as interpreted by the Supreme Court of the United States in various decisions, has been found insufficient to authorize the procedure and action necessary to give effect to its purpose. The language of the proposed amendments is believed to be so clear as to admit of no misinterpretation.

Your attention is particularly called to the fact that the authority to correct rates which have been found to be unlawful is neither arbitrary nor final under the provisions of this bill. In every case the carriers must have due notice and opportunity to be heard before any change in rates can be ordered, and all orders of this character are made subject to review by a circuit court of the United States and by the Supreme Court of the United States.

As already stated, the sole purpose of these amendments is to furnish the means of enforcing the present provisions of the law against unreasonable rates and unjust discriminations, and to that end to confer upon the Commission the degree of authority respecting rates which for ten years it was supposed to have, but which the Supreme Court has declared it does not possess.

If the general features of the bill as above outlined meet your approval, it is respectfully suggested that you take action expressing your approbation and support to the Senators and Representatives from your State, and to the committees on Interstate and Foreign Commerce of the United States Senate and House of Representatives at Washington, either alone or with others, or by petition or otherwise.

I would be glad to hear from you in respect to the matter, and would be pleased to receive advice of any action which you may take, and copies of any letters, petitions, or other documents which may be forwarded to Senators and Representatives or either of the committees.

Very respectfully,

EDW. A. MOSELEY, *Secretary.*

STATEMENT OF MR. WILLIAM A. HOVER.

Senator KEAN. You may state your name, place of residence, and your occupation.

Mr. HOVER. William A. Hover. I live at Denver, Colo. I am a wholesale druggist.

I represent in this hearing the Denver Chamber of Commerce and Board of Trade and the Denver Freight Bureau. The former is the leading commercial organization of the trans-Missouri region, having a membership of over 1,000 in number and representing the best of our manufacturing, commercial, and professional life. The latter is a representative organization of jobbers in all branches of trade, controlling the major part of the competitive tonnage which enters into and is distributed from Denver.

Denver, the home of these organizations, needs no introduction at my hands. Suffice to say that she is the undisputed metropolis of the entire Rocky Mountain region; the center of a vast grazing, mining, and agricultural territory; a city with a population of 175,000 people; a city of modern construction, well maintained, alive, aggressive in character, and in every way, except commercially, worthy of being classed as one of the most progressive, charming, and delightful of our American municipalities.

Six lines of transportation connect her with points on the Missouri River; five of these lines are under independent ownership and management. Transportation facilities are ample both as to incoming tonnage and for distribution to the most remote sections of her territory.

Denver rightfully claims, by reason of her geographical location, her distributive facilities, her remoteness from other centers of commerce and other cities of her class, the inherent right and privilege of distributing supplies within territory legitimately her own, in fair competition with other points, referring particularly to points located on the Missouri River. To the casual observer it would seem that Denver should be the natural distributive center of the Rocky Mountain region. By this is meant not only Colorado, but New Mexico, Utah, Idaho, Wyoming, and southern Montana. Outside of the State of Colorado, so far as supplying the requirements of the people of these States and Territories is concerned, Denver might as well be located in Alaska, or in some other Territory equally remote, and it is my purpose in coming before this committee to demonstrate this gross and unfair discrimination against Denver in favor of Missouri River cities, and even in favor of San Francisco and other California common points, in the distribution of those commodities that are necessary to the requirements of the consuming population located in Denver's territory, and to ask in behalf of the commercial interests of our community the fair consideration by your committee of the several legislative measures now before you, the purpose and intent of which is to increase the power, as I understand was originally intended, of the Interstate Commerce

Commission, not solely for the purpose and with a hope of securing for ourselves such relief as may be required from time to time in order to enable us to compete more equally with the Missouri River towns and distributive centers of the East, but we believe further that, in view of the character of service performed by transportation companies acting as public carriers, they are amenable to some restraining influence and to governmental control, to the extent, at least, of insuring fair, equitable, and just protection to the people and communities that they serve.

Senator KEAN. How do you think that will affect Denver or the freight rates?

Mr. HOVER. Do you mean increasing the power?

Senator KEAN. Yes. Do you think it would change them from Alaska—you speak of Alaska—down to the center of Colorado?

Mr. HOVER. Not necessarily to that extent, but as a preventive of this discrimination, as against localities it would undoubtedly have some favorable effect.

Senator KEAN. Have you not got a remedy now if you are discriminated against?

Mr. HOVER. We have a remedy, but it is hardly adequate to meet the exigencies of the case.

Senator KEAN. What is the discrimination?

Mr. HOVER. It is one of distribution as against Denver in favor of cities on the Missouri River.

Senator KEAN. Has not that question been passed upon by the Interstate Commerce Commission?

Mr. HOVER. No.

Senator KEAN. Has it ever been presented to them?

Mr. HOVER. It has been presented as affecting, perhaps, certain commodities. As affecting the general question of distribution from there, it has not been passed upon to my knowledge.

Senator KEAN. Do you complain that the rates are too high?

Mr. HOVER. No, sir; we are making no complaints as to the character of the rates. The rates, so far as I know, are fairly satisfactory. We are complaining of discrimination as against Denver on tonnage passing through Denver.

Senator KEAN. Do you claim it is discrimination as against Denver in favor of Kansas City and Omaha?

Mr. HOVER. Yes; I will bring those points out.

In the judgment of our people, in no other way can transportation companies themselves be relieved from the selfish and discriminating influence of corporation abuse and power, as now illustrated by the hold which private car lines have secured in the transportation of our more staple commodities.

Formerly the competition of numerous independent lines serving the same territory was of such character as to minimize the danger resulting from the concentration of authority and power. The last few years, however, has witnessed a tremendous concentration of both authority and power in the hands of a very few men. West of the Missouri River five men practically control the transportation question of that vast area. And while to-day that power may be dispensed by safe and conservative hands and the interests of the peo-

ple fairly conserved, managements do change, and in less considerate hands all-directed influence of a power so great is dangerous in the extreme. It would seem that the people should have the unquestionable right to secure for themselves, in the medium of a commission properly constituted, an instrument designed to exercise a restraining influence over policies which so vitally affect their interests for either good or bad.

Denver's attitude is not one of antagonism to railroad corporations or to any other community. Commercial Denver does not ask that something now possessed by a rival community shall be taken away and be given to her. Commercial Denver does not ask that special consideration be shown her that will unfairly discriminate against commercial rivals. She stands ready to compete in the markets that are legitimately tributary to her with any other city of the country on an equal footing. Denver properly and justly claims for her merchants the right of distribution in territory west of her on equal terms with Missouri River towns and cities farther east. She also claims fair adjustment of rates to contiguous territory to the east that will fairly enable her to compete with the Missouri River and eastern competitors generally. The conditions are such at the present time as to render such competition on the part of Denver merchants impossible, nor is it our belief that it will be possible to bring about such a readjustment of rates as will admit of the enforcement of these principles without the influence of a higher power authorized to make such adjustment as will prevent discrimination against one community in favor of another community. The basis of our complaint is not so much on account of discriminating rates as applied to items manufactured in Denver as on account of discriminating and prohibitive rates as applied to such commodities as are shipped into Denver and redistributed from this point. In other words, Denver's jobbing interests are vitally affected by the character of the discrimination above referred to.

So far as distributive rates within the territory bounded by the State lines of Colorado are concerned, Denver has but little to complain of. For the most part rates within the borders of our State are based upon the Denver, or, more properly speaking, upon the Colorado common-point rate, the exception being rates to the towns lying at the base of the Rocky Mountains, extending from Cheyenne on the north to Trinidad on the south, including Colorado Springs and Pueblo, all known as Colorado common points. These towns all take the Denver rate, and as a result Denver is handicapped to the extent of the local to these points. The fact that they do take the common rate, while in a measure a hardship to Denver, is undoubtedly, under the circumstances, justifiable and no relief in this direction can properly be expected. Local rates from Denver to these points are, however, discriminating and too high. Their local character, however, with the exception of the rate to Cheyenne, places the power of correction beyond Federal jurisdiction, except so far, perhaps, as such rate may affect interstate business in a manner discriminating in character as between localities. In other trans-Missouri territory distributive rates from Denver are based, not upon the Denver or the so-called "Colorado common-point rate," but on the

Missouri River. It therefore can be said that the Missouri River is at present the basing point of all rates in trans-Missouri territory.

Just how this operates to the disadvantage of Denver in favor of the Missouri River towns and cities farther east, I will, with your permission, undertake to show in detail: Commencing first with Wyoming, and having to do with cities and towns in southern Wyoming along the line of the Union Pacific Railway from Cheyenne, 107 miles nearly due north of Denver and west to Evanston, located near the Utah line, also having to do with points north of Cheyenne located on the Wyoming branch of the Fremont, Elkhorn and Missouri Valley Railway, having direct connection with Denver over the Union Pacific and the Colorado and Southern, and in particular referring to Douglas, Casper, and Lander. The latter town, while somewhat remote from the road, depends upon the Casper rate for supplies. These towns are located along the valley of the North Platte, and have tributary to them a country of great promise that is now undergoing rapid development. The Chicago and Northwestern Railway Company, who own and control the Fremont, Elkhorn and Missouri Valley Railway, are, I understand, now extending that line westward to Lander. These towns naturally look to Denver for their supplies. There is a community of interests existing between all western towns that draws them together socially and commercially, and all things being equal they prefer to do business in Denver. Existing rates render the exercise of this preference impossible. In making these comparisons I will in most cases, in order to save time and a useless array of figures, speak in terms of first class. The other classes are set forth in the accompanying tables, and which will later be introduced as exhibits.

From Denver to Douglas the distance is 275 miles, from Omaha to Douglas 584 miles, over a territory of about the same character and at about the same cost of construction. The rate from Denver is $1.11½ per 100 pounds; from Omaha, $1.86. Adding to the Denver rate the Colorado common-point rate of $1.25 makes the Denver combination $2.36½ to Douglas. The Denver rate to Douglas is built up as follows: The Union Pacific and Colorado and Southern combine on a rate to Orin Junction, distant from Denver 261 miles, of 80 cents. To this is added a prohibitive local by the Fremont, Elkhorn and Missouri Valley road of 31½ cents arbitrary from Orin Junction to Douglas, a distance of 14 miles.

To Casper the Denver rate is $1.52, distance 328 miles; from Omaha, $1.90, distance 637 miles. Combination via Denver, $2.77, with a prohibitive local from Orin Junction of 72 cents for a 67-mile haul.

The rate to two points in southern Wyoming located on the line of the Union Pacific Railway will be sufficient to illustrate the situation there. Comparisons to other points, as well as the points already cited, located in this territory, appear in the accompanying exhibit, marked "Exhibit A."

For the purpose of comparison we will select Cheyenne, distant 107 miles nearly due north from Denver, and Laramie, located 57 miles west of Cheyenne and 164 miles from Denver, the two most important towns in southern Wyoming.

The rates to Cheyenne are:

First	$0.45
Second	.40
Third	.35
Fourth	.30
Fifth	.27

Distance, 107 miles.

From Omaha, Kansas City, and other Missouri River points:

First	$1.25
Second	1.00
Third	.80
Fourth	.65
Fifth	.50

Distance from Omaha to Cheyenne, 519 miles; from Kansas City to Cheyenne, 747 miles. In other words, a merchant located at Kansas City can ship goods through Denver to Cheyenne, a distance of 747 miles, for $1.25 per 100 pounds. The Denver merchant pays for the same service $1.70, or 45 cents for the 107-mile haul, as against $1.25 for the 747-mile haul over exactly the same lines.

To Laramie, located 57 miles west of Cheyenne, rates are as follows:

	First.	Second.	Third.	Fourth.	Fifth.
From the Missouri River	$1.76	$1.45	$1.19	$0.97	$0.79
From Denver	.81	.70	.59	.47	.47
Denver combination	2.06	1.70	1.39	1.12	.97

The rates to these two sections of Wyoming are sufficiently discriminating in character to influence a very large proportion of the business which would otherwise naturally look to Denver as a source of supply in favor of Omaha and other Missouri River towns.

Senator KEAN. Have you ever brought that complaint before the court?

Mr. HOVER. That specific complaint has not been made.

Senator KEAN. Have you tried to enforce your remedies under the existing law?

Mr. HOVER. No effort has been made.

Senator KEAN. Have those complaints ever been made to the Interstate Commerce Commission?

Mr. HOVER. Yes; in some specific interests as applying to certain commodities. I think there has been no general complaint of a like character which has been made so far as the general proposition of distribution was concerned.

Senator KEAN. What was the opinion or decision of the Commission in regard to that?

Mr. HOVER. I think that case is still pending—still in the hands of the Commission. It has never been decided. It is what we call the Kendall Case.

Senator KEAN. When did you make that complaint?

Mr. HOVER. It was made by an individual, not by any of our organizations.

Senator KEAN. How long ago?

Mr. HOVER. I do not recall the length of time.

Senator KEAN. A month ago?
Mr. HOVER. Some months ago.
Senator KEAN. Two months ago?
Mr. HOVER. I could not tell you the time.
Senator KEAN. Five or six months ago?
Mr. HOVER. I have no idea as to the time. I simply recollect that it is within the last year.
Senator KEAN. Have you ever made these complaints to the railroad companies?
Mr. HOVER. Repeatedly.
Senator KEAN. What do they say in reply?
Mr. HOVER. Why, they justify the difference in the charge by the fact that a readjustment of the rates would revolutionize rates—and it certainly would west of Missouri. Furthermore, these charges are for the most part along the lines more or less controlling local territory.
Senator KEAN. What is the reason for that rate you refer to between Denver and Cheyenne and Kansas City and Cheyenne?
Mr. HOVER. Why, there should be no reason for that. That is the way the merchants there regard it—that there is no legitimate reason why such a difference should exist.
Senator KEAN. What reason does the railroad give?
Mr. HOVER. Why, I do not know that they have ever assigned any specific reason. If they have I have never heard of it.
Senator KEAN. You have called it to their attention?
Mr. HOVER. Their attention has been called to it.
Senator KEAN. Don't they say anything at all?
Mr. HOVER. They justify it—to an extent, at least—by saying that Cheyenne is a common point; and that is true, perhaps, so far as Omaha business is concerned, but when it comes to Kansas City business a different condition prevails. They have a direct line to Omaha. Their Kansas City line passes right through Denver.
Senator KEAN. As I understand it, you are here advocating additional powers should be given to the Interstate Commerce Commission to fix a rate?
Mr. HOVER. To reduce or fix a rate.
Senator KEAN. And you say that you do not complain of the rates being too high?
Mr. HOVER. We do not.
Senator KEAN. But that they are discriminative?
Mr. HOVER. Yes.
Senator KEAN. That would not be cured by the power to fix the rate.
Mr. HOVER. That is what we claim.
Senator KEAN. I think you have that remedy under the existing law.
Mr. HOVER. Possibly we have in a measure; but, as I said before, it is hardly adequate. The existing law is hardly adequate.
Senator KEAN. If it is an unjust discrimination you have a right to apply to the court for injunction.
Mr. HOVER. That is true, they may; but who makes the future rate? The courts can not make it.
Senator KEAN. If the court will enjoin the discriminations.

Mr. HOVER. Very true, but the railroad companies may make such a change as will in a measure modify that discrimination, but they may not make a change sufficient as a matter of fact to be of any benefit in practice, to do away with the discrimination, and you have to go through the whole thing again. The remedy is not adequate.

Senator CLAPP. Do you think a court could make any order on earth except to abate the discrimination?

Mr. HOVER. No; I do not think it would.

Senator CLAPP. If the court entertained jurisdiction at all and made any decree as to the discrimination, it would have to be in effect to abate the discrimination itself, would it not?

Mr. HOVER. Surely. The comparison of the Idaho rates discloses a condition of still greater discrimination. The rates to Idaho, like all rates west of Omaha, are based upon the Missouri River, consisting for the most part of blanket rates applicable to four groups, each group being made up of the cities and towns located between two terminal points. In making these comparisons we will have to do with Groups III and IV only, as within these two groups are included the principal towns in which Denver merchants are interested.

Group III includes all stations on the Oregon Short Line from Weston, Idaho, to Barretts, Mont., located on the Butte and Helena branch of the Oregon Short Line, and including Pocatello, Idaho Falls, etc.

Group IV includes territory west of Pocatello as far as Huntington, Oreg. In this group are located Boise, Shoshone, Nampa, etc. The rates from the Missouri River to points in Group IV are as follows:

	First.	Second.	Third.	Fourth.	Fifth.
Missouri River	$2.50	$2.15	$2.00	$1.70	$1.50
From Denver	2.40	2.08	1.76	1.52	1.20
Denver combination	3.65	3.08	2.56	2.17	1.70

The distance from Omaha to Boise, one of the principal towns in this group, is 1,336 miles, and from Denver 924 miles, a distance in favor of Denver of 412 miles. with a difference in rates of 10 cents only per 100 pounds. Should this freight originate in Kansas City instead of Omaha, the same would have to pass through Denver to reach point of destination, covering a distance of 1,564 miles, involving a haul of 640 miles, at a rate of 10 cents, only, more than the Denver rate. In this territory San Francisco is a competing point, although the distance from San Francisco to Boise is 1,187 miles against 924 miles from Denver. Freight is hauled this 1,187 miles for $1.95 per 100 pounds, while from Denver, as noted above, the rate is $2.40 per 100 pounds, although the difference in mileage favors Denver to the extent of 263 miles, and cost of construction no greater, if so great, in the one instance as in the other, the relative cost of service being considerably greater on the San Francisco-Boise haul than on the Denver-Boise haul; the heavy grades of the Sierra Nevada range having in the one instance to be overcome. These figures are fully set forth as to all classes and as between the

three competitive points, namely, Omaha, San Francisco, and Denver, in the accompanying exhibit marked "Exhibit B." I, therefore, will not undertake, at this time, to enter into further details, as they are a repetition in character of the Boise illustration as above set forth.

Denver, by reason of direct railway connections via the Union Pacific Railway and the Oregon Short Line, has also tributary to it, in competition with St. Paul, Minneapolis, and Omaha, a certain amount of trade located at Butte, Anaconda, and Helena, Mont., and vicinity, the distance from Denver to Butte being 922 miles and from Omaha 1,334 miles, a difference in favor of Denver of 412 miles. The rates to Montana common points, including Butte, Anaconda, etc., are as follows:

	First.	Second.	Third.	Fourth.	Fifth.
From the Missouri River	$2.50	$2.15	$1.75	$1.50	$1.25
St. Louis	3.10	2.60	2.10	1.75	1.45
Chicago	3.10	2.65	2.15	1.75	1.45
Denver	2.00	1.72	1.40	1.20	1.00
Denver combination	3.25	2.72	2.20	1.85	1.50

The Denver combination referred to being based upon the Missouri River rate, it is needless to say that Denver has no chance whatever in this territory except on a few commodities that are manufactured here, and on these commodities Denver pays a very much higher relative rate than either Chicago, St. Louis, or the Missouri River. For instance, bottles which are manufactured in Denver take to Montana common points a rate of 72 cents, as against 90 cents from the Missouri River, 90 cents from St. Louis, and 90 cents from Chicago, notwithstanding the vast difference in mileage; on packing-house products a rate of $1 from Denver, as compared with $1.25 from the Missouri River, $1.43½ from St. Louis, and $1.45 from Chicago. These figures are fully set forth as to all classes in the accompanying exhibit, marked "Exhibit C."

It is in dealing with the Utah situation that we find the most extreme instances of discrimination. Utah can more properly be considered Denver territory in competition with Missouri River points than can localities in either Wyoming, Idaho, or Montana. The State of Utah bounds Colorado on the west, and depends for transportation of west-bound commodities on two lines of railroad owned and controlled by two of our great transcontinental systems—namely, the Harriman system and the Gould system—by the former over the Union Pacific from Omaha to Ogden, and by the latter over the Rio Grande Western from Grand Junction, Colo., to Salt Lake City, the Rio Grande Western being the outlet for both the Colorado Midland and the Denver and Rio Grande at Grand Junction. From Denver, through the medium of the two latter roads, we have direct connection with Utah, and a certain percentage of the west-bound tonnage consigned to Utah points passes through Denver over one or the other of these two lines. Therefore Denver can justly claim the right of distribution into this territory on the same terms that are accorded Missouri River towns, St. Louis, Chicago, and other eastern points. On the present basis of rates, however, Denver mer-

chants can not even get into Utah on as favorable a basis as the merchant located in San Francisco who ships his goods through Denver to San Francisco and back again to Salt Lake City, which fact I will later prove.

The following are the competitive class rates to Utah common points, consisting of Ogden, Salt Lake, Spanish Fork, and intermediate points:

	First.	Second.	Third.	Fourth.	Fifth.
From Chicago and Duluth	$3.10	$2.65	$2.15	$1.75	$1.45
From the Missouri River	2.30	2.00	1.70	1.43	1.18
From San Francisco and California common points	1.72½	1.50	1.27½	1.07	.88½
From Denver	1.85	1.60	1.36	1.15	.96
Denver combination based upon the Missouri River	3.10	2.60	2.16	1.80	1.46

In other words, the Denver merchant is discriminated against in favor of the merchant located on the Missouri River to the extent of 80 cents first class, 60 cents second, 46 cents third, 37 cents fourth, and 28 cents fifth, and this discrimination extends clear back to Atlantic seaboard territory. Such commodities as we produce in Denver are likewise discriminated against in favor of eastern centers. For instance, beer from our Denver breweries takes a 70-cent commodity rate to Utah common points, and the same rate applies from the Missouri River, notwithstanding that Denver is distant from Omaha 572 miles and from Kansas City 640 miles. On packing-house products the rate from Denver is 73¾ cents, against $1.18 from the Missouri River. Generally speaking, however, it is on the class rates that the greatest discrimination exists. This difference against Denver diverts practically all the business moving under class rates from Denver to eastern centers. The situation as applied to Utah is particularly aggravated in view of the fact, as before recited, that San Francisco merchants can ship through Denver, through Salt Lake City, to San Francisco on a commodity rate and return the same goods to Salt Lake City on the local rate, and for less than the same goods can be unloaded in Denver and reshipped to Salt Lake City, notwithstanding the fact that San Francisco is distant from and beyond Salt Lake City 826 miles, while Denver lies 627 miles to the east of that point. Referring to the above table of rates, you will note that Denver pays $1.85 to Salt Lake City, a distance of 627 miles, against a return rate of $1.72½ from San Francisco and California common points to Salt Lake City, a distance of 826 miles.

I will now proceed to show how the application of this combination of rates will admit of the possibility as above set forth: For instance, a mixed car of drugs, patent medicines, chemicals, etc., takes a commodity rate from New York of $1.40 a carload to California common points. This rate, combined with the local back of $1.72½, lays the goods down in Salt Lake City for $3.12½. To Denver the same commodities take a water rate via Galveston of $2.33 per 100 pounds, or an all-rail rate of $2.72 per 100 pounds. Adding to these rates the local out of Denver to Salt Lake City of $1.85, brings the cost of these commodities when shipped to and from Denver to $4.18,

when the water rate is taken advantage of, and $4.15 on the all-rail rate. I will take the case of a wholesale boot and shoe dealer doing business in Denver and in San Francisco: Rubber boots and shoes take a commodity rate from New York to San Francisco of $1.35 a carload. Adding to this the local first class back to Salt Lake City of $1.72½, and the cost is to the Salt Lake dealer $3.07½. To Denver the wholesaler pays for his goods coming by way of the water line via Galveston $2.33, and if they come by all rail $2.72. Adding to these figures the local of $1.85, it will cost to lay them down in Salt Lake City $4.18 in the one instance, and $4.57 in the other instance, as against the San Francisco rate of $3.07½. These comparisons can be multiplied almost indefinitely and will apply to nearly every commodity handled by wholesalers located at either point. The conditions as pertaining to Utah business are more fully set forth and comparisons more completely made in a table which is made a part of this report and which is marked "Exhibit D" and "Exhibit G."

In order to make complete a statement regarding Denver's position as a distributing center there is also accompanying this report a table of rates and comparisons from Denver and competitive points to points in New Mexico. It is not necessary to dwell upon the conditions in this latter Territory, except to say that they operate to a considerable extent against Denver merchants in competition with Missouri River points. A different set of conditions, however, prevail in this Territory than those covering rates hereinbefore mentioned. These conditions are of such character as to hardly warrant equality of service as between Denver and Missouri River points.

In conclusion, I desire to state that the merchants of Denver and the people of Colorado, irrespective of party, are thoroughly in accord with the views of President Roosevelt in the matter of extending the powers of the Interstate Commerce Commission. We believe with the President that the Interstate Commerce Commission should have the power, after full, careful, and impartial investigation, of naming the rate, and that same should be made effective immediately. A commission without this power is simply a bureau of statistics and information, and is of no practical value to either the shippers on one hand or railroad interests on the other.

Now, in connection with what I have said, I would like the privilege of introducing some exhibits, which show a detailed statement of rates, affecting the distributing rates from Denver, and which show in detail the situation at Denver and these various localities.

Senator KEAN. There will be no objection to that.

Mr. HOVER. I would like to say further in connection with this that this statement as to traffic conditions surrounding Denver I have tried to make quite complete and it embraces discriminating differences in localities where such discrimination is to a greater or less extent justified. There is no question about that, but in other localities that justification does not exist.

The exhibits are as follows:

EXHIBIT A.

Wyoming.

Population 1900.	Distance.		First.	Second.	Third.	Fourth.	Fifth.
	Miles.						
85	261	Denver to Orin Junction	1.22	1.03	0.92	0.75	0.70
			.80	.70	.60	.56	.45
888, banking	328	Denver to Casper[a]	.72	.64½	.58½	.50	.43½
			1.52	1.34½	1.18½	1.06	.88½
			.80	.70	.60	.56	.45
734, banking	275	Denver to Douglas[a]	.31½	.25½	.22½	.19½	.15
			1.11½	.95½	.82½	.75½	.60
	637	Omaha to Casper	1.90	1.70	1.45	1.24	1.00
	584	Omaha to Douglas	1.86	1.57	1.31	1.11	1.00
		Denver combination:					
Orin Junction to—		Orin Junction	2.47	2.03	1.72	1.40	1.20
Casper	67	Douglas	2.36½	1.95½	1.62½	1.40½	1.10
Douglas	14	Casper	2.77	2.34½	1.98½	1.71	1.38½

[a] First line, joint rate Union Pacific and Colorado Southern to Orin Junction; second line, Fremont, Elkhorn and Mississippi Valley, arbitrary to Casper and Douglas.

Southern Wyoming.

Population 1900.	Distance.		First.	Second.	Third.	Fourth.	Fifth.
	Miles.						
14,087	107	Denver to Cheyenne	*0.45*	*0.40*	*0.35*	*0.30*	*0.27*
			.60	.52	.45	.38	.32
8,207	164	Denver to Laramie	*.81*	*.70*	*.59*	.47	.47
			.90	.80	.65	.47	.47
2,317	281	Denver to Rawlins	*1.31*	*1.13*	*.89*	.74	.74
			1.35	1.20	.95	.74	.74
2,110	515	Denver to Evanston	*1.50*	*1.30*	*1.10*	.93	.93
			1.50	1.30	1.10	.93	.93
	519	Omaha[a] to Cheyenne	1.25	1.00	.80	.65	.50
	576	Omaha[a] to Laramie	1.76	1.45	1.19	.97	.79
	693	Omaha[a] to Rawlins	2.26	1.88	1.49	1.24	1.00
	927	Omaha[a] to Evanston	2.30	2.00	1.70	1.43	1.18
Kansas City to—		Denver combination:					
			1.70	*1.40*	*1.15*	*.95*	.77
Cheyenne	747	Cheyenne	1.85	1.52	1.25	1.03	.82
			2.06	*1.70*	*1.39*	*1.12*	.97
Laramie	804	Laramie	2.15	1.80	1.45	1.12	.97
			2.56	*2.13*	*1.69*	*1.39*	*1.24*
Rawlins	921	Rawlins	2.60	2.20	1.75	1.39	1.24
			2.75	*2.30*	*1.90*	*1.58*	1.43
Evanston	1,155	Evanston	2.75	2.30	1.90	1.58	1.43

[a] Kansas City rates the same.

Above figures in italics indicate changes on account of new tariff supplements to U. P. G. F. O. No. 9185, May 5, 1905.

EXHIBIT B.

Idaho.

Distance.		Rates.	First.	Second.	Third.	Fourth.	Fifth.
	Miles.						
Omaha to Boise	1,336	Missouri River to Boise, Shoshone, Nampa, and intermediate points (Group IV).	2.50	2.15	2.00	1.70	1.50
Omaha to Pocatello.	1,072	Missouri River to Weston and Pocatello, Idaho; Barratts, Mont., and intermediate points (Group III).	2.50	2.15	1.75	1.50	1.25
San Francisco to Boise.	1,187	San Francisco to Shoshone, Nampa, etc.	2.58	2.24	1.81	1.53	1.24
		San Francisco to Boise	1.95	1.75	1.55	1.45	1.18
San Francisco to Pocatello.	923	San Francisco to towns in Group III.	2.58	2.24	1.83	1.57	1.24
Denver to Boise	924	Denver to towns in Group IV.	2.40	2.08	1.76	1.52	1.20
Denver to Pocatello.	660	Denver to towns in Group III.	2.00	1.72	1.40	1.20	1.00
		Denver combination:					
		Group IV	3.65	3.08	2.56	2.17	1.70
		Group III	3.25	2.72	2.20	1.85	1.50

Commodities.

Articles.	Missouri River to—		Denver to—	
	Group III.	Group IV.	Group III.	Group IV.
Beer	1.00	1.00	0.80	0.80
Bottles	1.21	1.21	Class 1.00	Class 1.20
Canned goods	1.30	1.25	Class 1.00	Class 1.20
Dry goods, cotton piece goods	2.50	2.50	Class 2.00	Class 2.40
Mining machinery	1.25	1.25	Class A .92	Com. 1.60
Packing-house products	1.36¼	1.25	1.00	1.20
Furniture	1.25	1.25	Class.	Class.

EXHIBIT C.

Montana.

Distance.		Rates.	First.	Second.	Third.	Fourth.	Fifth.
	Miles.						
Omaha to Butte	1,334	Chicago	3.10	2.65	2.15	1.75	1.45
		St. Louis	3.10	2.60	2.10	1.75	1.45
		Missouri River	2.50	2.15	1.75	1.50	1.25
Denver to Butte	922	Denver	2.00	1.72	1.40	1.20	1.00
In favor of Denver.	412	Denver combination (to Montana common points, including Anaconda, Butte).	3.25	2.72	2.20	1.85	1.50

Commodities.

Articles.	Rate from—			
	Chicago.	St. Louis.	Missouri River.	Denver.
Beer	0.85	0.85	0.75	0.60
Bottles	.90	.90	.90	.72
Canned goods	1.22	1.22	1.10	a.88
Dry goods	2.90	2.85	2.50	2.00
Mining machinery	1.05	1.04½	.80	.64
Packing-house products	1.45	1.43½	1.25	1.00
Soap	1.15	1.15	1.05	.84

[a] Longman.

EXHIBIT D.

Utah.

Distance to Salt Lake.		Rates.	First.	Second.	Third.	Fourth.	Fifth.
	Miles.						
Chicago[a]	1,560	Chicago and Duluth	3.10	2.65	2.15	1.75	1.45
Duluth	1,645						
Union Pacific	1,040	Missouri River	2.30	2.00	1.70	1.43	1.18
Canadian Pacific	826	San Francisco	1.72½	1.50	1.27½	1.07	.88½
Union Pacific	627	Denver	1.85	1.60	1.36	1.15	.96
		Denver combination to Salt Lake, Ogden, etc.	3.10	2.60	2.16	1.80	1.46
			.80	.60	.46	.37	.28

[a] Chicago and Northwestern, Chicago and Duluth to Omaha.

Commodities.

Articles.	Missouri River.	Denver.
Beer	0.70	0.70
Bottles	1.03	.65
Cotton piece goods	2.00	1.25
Mining machinery	.98	.58
Packing-house products	1.18	.78½

EXHIBIT E.

New Mexico.

Rates.	First.	Second.	Third.	Fourth.	Fifth.	Distance.
						Miles.
Raton from—						
Missouri River	1.45	1.20	1.00	0.85	0.66	676
Denver	.72	.60	.53	.40	.40	282
Denver combination	2.00	1.63	1.36	1.07	.90	.....
Las Vegas from—						
Missouri River	1.70	1.50	1.35	1.20	.95	786
Denver	.88	.85	.82	.71	.63	393
Denver combination	2.13	1.85	1.62	1.36	1.18	.....
Santa Fe from—						
Missouri River	1.70	1.50	1.35	1.20	.95	869
Denver	.88	.85	.82	.75	.74	476
Denver combination	2.13	1.85	1.62	1.40	1.24	.....
Albuquerque from—						
Missouri River	1.70	1.50	1.35	1.20	.95	918
Denver	.88	.85	.82	.77	.74	525
Denver combination	2.13	1.85	1.62	1.42	1.24	.....
Socorro from—						
Missouri River	1.70	1.50	1.35	1.20	.95	994
Denver	.95	.85	.83	.82	.80	601
Denver combination	2.13	1.85	1.62	1.42	1.24	.....
San Marcial from—						
Missouri River	1.70	1.50	1.35	1.20	.95	1,021
Denver	1.05	.95	.90	.84	.80	628
Denver combination	2.30	1.95	1.70	1.49	1.30	.....
Las Cruces from—						
Missouri River	1.70	1.50	1.35	1.20	.95	.....
Denver	1.43	1.20	1.10	.97	.92	.....
Denver combination	2.68	2.20	1.98	1.62	1.42	.....
Silver City from—						
Missouri River	2.10	1.89	1.67	1.48	1.20	1,197
Denver	2.03	1.80	1.57	1.40	1.10	804
Denver combination	3.28	2.80	2.37	2.05	1.60	.....
Deming from—						
Missouri River	2.10	1.79	1.60	1.43	1.15	1,149
Denver	1.93	1.70	1.50	1.35	1.05	756
Denver combination	3.18	2.70	2.30	2.00	1.55	.....

EXHIBIT F.

Colorado.

Rates to Colorado common points from—	First.	Second.	Third.	Fourth.	Fifth.
New York, Philadelphia, Boston, Baltimore:					
Water	2.33	1.90	1.47	1.16	0.93
All rail	2.72	2.20	1.73	1.33	1.07
Chicago, New Orleans	2.05	1.65	1.25	.97	.77
Mississippi River	1.85	1.45	1.15	.92	.72
Missouri River	1.25	1.00	.80	.65	.50
California common points	3.00	2.60	1.90	1.55	1.30

EXHIBIT G.

Table illustrating application of rates on commodities when shipped through Denver to San Francisco and back to Salt Lake in comparison with rate when shipped to Denver and then to Salt Lake from Missouri River or points east of Missouri River.

Canned goods:

	To San Francisco from—	
(*a*) Mixed car fish, fruits, meats, etc	1.50 L. C. L. 1.00 C. L.	New York.
	1.40 L. C. L. .90 C. L.	Missouri River.
(*b*) Straight car corn	0.95	New York.
	.85	Missouri River.
(*c*) Straight car beans and peas	.95	New York.
	.85	Missouri River.

[*a*, *b*, *c*] To Denver from New York water rate, 93 cents.

Canned goods—Continued.
Local San Francisco-Salt Lake, fourth class, 1.07.
Local Denver-Salt Lake, fourth class, 1.15.
(*a*) New York-San Francisco-Salt Lake, 1.00+1.07=2.07.
New York-Denver-Salt Lake, 0.93+1.15=2.08.
(*b*) New York-San Francisco-Salt Lake, 0.95+1.07=2.02.
New York-Denver-Salt Lake, 0.93+1.15=2.08.
(*c*) New York-San Francisco-Salt Lake, 0.96+1.07=2.03.
New York-Denver-Salt Lake, 0.93+1.15=2.08.

	Miles.
Distance, New York-San Francisco-Salt Lake	4,550
Distance, New York-Denver-Salt Lake	2,788
	1,762

Cotton piece goods:
Common rate, New York-San Francisco, 1.50 L. C. L.; 1.00 C. L.
Common rate, New York-Denver, 1.85, C. L. or L. C. L.
Local, San Francisco-Salt Lake, 1.72½, first class.
Local, Denver-Salt Lake, 1.25, C. L. or L. C. L.
New York-Francisco-Salt Lake, 1.00+1.72½=2.72½.
New York-Denver-Salt Lake, 1.85+1.25=3.10.
Boots and shoes:
Common rate, New York-San Francisco, 2.50, C. L. or L. C. L.
Class rate, New York-Denver, 2.33, water; 2.72 all rail.
Local, San Francisco-Salt Lake, first class, 1.72½.
Local, Denver-Salt Lake, first class, 1.85.
New York-San Francisco-Salt Lake, 2.50+1.72½=4.22½.
New York-Denver-Salt Lake, 2.33+1.85=4.18, water; 2.72+1.85=4.57, rail.
Rubber boots and shoes:
Common rate, New York-San Francisco, 1.35 C. L., 1.85 L. C. L.
Class rate, New York-Denver, 2.33, water; 2.72, rail.
Local, San Francisco-Salt Lake, first class, 1.72½.
Local, Denver-Salt Lake, first class, 1.85.
New York-San Francisco-Salt Lake, 1.35+1.72½=3.07½.
New York-Denver-Salt Lake, 2.33+1.85=4.18, water; 2.72+1.85=4.57, rail.
Local, Salt Lake-Grand Junction, Colo., 1.10.
Local, Denver-Grand Junction, Colo., 1.55.
New York-San Francisco-Salt Lake-Grand Junction, 1.35+1.72½+1.10=4.17½.
New York-Denver-Grand Junction, 2.33+1.55=3.88, water; 2.72+1.55=4.27, rail.
Drugs, medicines and chemicals, medicinal oils, witch hazel, medicinal and flavoring extracts and dyestuffs n. o. s.: [a]
Common rate, New York-San Francisco, 1.90 L. C. L., 1.40 C. L.
Class rate, New York-Denver, 2.33 water, 2.72 rail.
Local, San Francisco-Salt Lake, 1.72½.
Local, Salt Lake-Grand Junction, Colo., 1.10.
Local, Denver-Salt Lake, first class, 1.85.
New York-San Francisco-Salt Lake, 1.40+1.72½=3.12½.
New York-Denver-Salt Lake, 2.33+1.85=4.18 water; 2.72+1.85=4.57 rail.
New York-San Francisco-Salt Lake-Grand Junction, 1.40+1.72½+1.10=4.22½.
New York-Denver-Grand Junction, 2.33+1.85=4.18 water; 2.72+1.85=4.57 rail.
Potassium cyanide:
Common rate, New York-San Francisco, 1.90 L. C. L., 1.10 C. L.
Common rate, New York-Denver, 1.63.
Local, Salt Lake, 1.72½ from San Francisco.
Local, Salt Lake, 1.85 from Denver.
New York-San Francisco-Salt Lake, 1.10+1.72½=2.82½.
New York-Denver-Salt Lake, 1.63+1.85=3.48.

RESOLUTION OF CHAMBER OF COMMERCE OF ROANOKE, VA.

Senator KEAN. I have here a resolution of the Chamber of Commerce of Roanoke, Va., which I will have put into the record. It is as follows:

CHAMBER OF COMMERCE OF ROANOKE, VA.,
May 16, 1905.

Hon. STEPHEN B. ELKINS,
Chairman Senate Committee on Esch-Townsend Rate Bill, Washington, D. C.

DEAR SIR: At a meeting of the chamber of commerce of this city held May 10, 1905, the inclosed resolution was passed pertaining to

[a] From Chicago to Salt Lake, common, C. L., 1.90; from St. Louis to Salt Lake, common, C. L., 1.70; from Missouri River to Salt Lake, common, C. L., 1.10; from Missouri River to Denver rate, 1.25; from Denver to Salt Lake, rate, 1.85.

the Esch-Townsend bill, and I was directed to transmit to you a copy of the same.

I herewith inclose a certified copy of the resolution.

Very truly, yours,

E. B. JACOBS,
Secretary and Treasurer.

Whereas there is now pending before the committee of the Congress of the United States an investigation looking to the recommendation of proper laws for the government of commerce between the States of the Union and the correcting of any abuses that may now exist; and

Whereas among the propositions pending before said committee is one that is set forth in what is commonly known as the "Esch-Townsend bill," by which it is sought to vest in the Interstate Commerce Commission the rate-making power over the railroads of this country; and

Whereas the Chamber of Commerce of the city of Roanoke, Va., is in full sympathy with the purposes of said proposed legislation, if it shall appear that the present laws are inadequate to correct any existing evils, so far as the same is intended to render impossible the granting of rebates by railway companies to favored shippers, or so far as it proposes to make unlawful any device whereby there shall be any discrimination among shippers under substantially the same conditions as well as with any legislation necessary and proper to restrain the improper use of private cars whereby the rights of the shipper who has no such facilities may be injured or impaired; but, being, at the same time, well persuaded that the enactment of laws placing the rate-making power over the railroads of this country into the hands of any governmental agency is opposed to the best traditions of our country and would result in the serious impairment of the activities that have been and are now the most potent factors in the development of the business interests of our country and would be unjust as well as inexpedient and unnecessary: Now, therefore, be it

Resolved, That the secretary of this body is hereby directed to transmit to said committee of Congress now in session a certified copy of this preamble and resolution, to the end that said committee may be informed that it is the opinion of the chamber of commerce of this city, representing the business interests of this community, that any legislation contemplating the taking away from the railroads of this country the right to make their own rates in competition among themselves and with other common carriers would be opposed to the best interests of the communities served by such companies; and that such action would result in tendencies utterly opposed to the principles upon which our Government is founded, and we pray that said committee may refrain from recommending any such legislation.

A true copy.

[SEAL.] E. B. JACOBS, *Secretary.*

STATEMENT OF MR. CHARLES H. BROWN.

Senator KEAN. You may state your name, residence, and occupation.

Mr. BROWN. I live at Mobile, Ala. I am in the bagging and cotton-tie business.

Senator KEAN. You are also president of the Chamber of Commerce at Mobile?

Mr. BROWN. Yes.

Senator KEAN. You appear here in behalf of the chamber of commerce?

Mr. BROWN. I appear in behalf of the chamber of commerce, and also as a merchant of Mobile. I will be very brief. I simply wish to say that I voice the sentiment of the commercial interests of Mobile when I say that we should regret exceedingly to see the making of rates pass into the hands of other people than the railroad companies. We realize what an enormous undertaking this would be, no matter how competent the men of the Commission may be, and we are in an era of prosperity. Our country is being developed by the railroads. We look upon railroading as a business enterprise. Our country is being developed by the railroads entering into different sections, and we can not conceive that the railroad companies or the men of means and money would put that money into any enterprise over which they had no control, and which if rates were made regardless of existing conditions and circumstances would bring them in no revenue. For that reason we would like to see it remain in the hands of the railroads.

Senator KEAN. Are the rates generally considered reasonable in Mobile and Alabama?

Mr. BROWN. Yes; and we are prospering.

Senator KEAN. Do you hear any complaints?

Mr. BROWN. No, sir.

Senator KEAN. Any complaints of rebates?

Mr. BROWN. None at all that I know of.

Senator KEAN. Or discriminations?

Mr. BROWN. No, sir.

Senator KEAN. That is all, and we are very much obliged to you, Mr. Brown.

LETTER OF MR. THEODORE F. KOCH.

Senator CLAPP. I have a letter here from a gentleman in St. Paul, which I will place in the record. It is as follows:

THEO. F. KOCH LAND COMPANY (INCORPORATED),
St. Paul, Minn., May 17, 1905.

Hon. MOSES E. CLAPP,
United States Senator, Washington, D. C.

DEAR SIR: As you are one of the Senate Committee on Interstate Commerce, investigating railroad rates and private car lines, I deem it proper to bring to your attention certain facts in connection with the shipment of fruit from Chadbourn, N. C., to northern markets.

I am heavily interested in fruit lands in Columbus County, N. C., in and around Chadbourn and Clarendon, where farmers raise straw-

berries in large quantities, so that last year nearly 1,000 carloads were shipped from Chadbourn and a couple of stations south, east, and west thereof, all being billed and iced in Chadbourn. This station is located on the Atlantic Coast Line, and said railroad company has, for the last few years, made a contract with the Armour Refrigerator Car Company, whereby said latter company is to furnish all refrigerator cars and do the icing of the fruit which is shipped from Chadbourn to northern markets, such as Washington, Baltimore, Philadelphia, New York, Boston, Buffalo, Cleveland, Cincinnati, Pittsburg, etc.

This year the Armour Refrigerator Car Company has not furnished the refrigerator cars as necessary, and thousands of crates of strawberries have rotted at the stations for want of such refrigerator cars to be loaded and shipped in.

A great many farmers have bought land from me on the installment plan in the vicinity of Chadbourn for the last eight or nine years. They rely to the greatest extent on the strawberry crop and their early vegetable crops for the returns from their investment and work, and they have to make payments on the lands also from said same strawberry and vegetable crops.

Inclosed clipping of the North Carolina papers shows what position said truck farmers are in this spring, through the failure of the Armour Car Company to furnish the facilities for transportation of their fruit. As said company has the exclusive right of transportation over the Atlantic Coast Line from Chadbourn and vicinity, the farmers and other parties interested with and through them are simply at the mercy of the private car lines.

I see from this morning's Pioneer Press that George R. Robbins, president of the Armour Car Line Company, claims before your honorable committee that the business of his car lines is entirely private business, and does not come under the operation of the interstate-commerce laws. The condition of affairs in and around Chadbourn seems to contradict the position of the president of said Armour Car Line Company.

I have asked State Senator J. A. Brown, of Chadbourn, N. C., to give you further particulars on the subject.

Very respectfully, yours,

THEODORE F. KOCH.

STATEMENT OF MR. HOWARD ELLIOTT.

Senator CULLOM. You may state your name, residence, and occupation.

Mr. ELLIOTT. Howard Elliott. I am the president of the Northern Pacific Railway Company, and I live at St. Paul, Minn.

I have been engaged in railroad business for nearly twenty-five years; from July, 1880, until October, 1903, with the Chicago, Burlington and Quincy Company, beginning as level rodman in northwestern Missouri; then clerk in various capacities; then auditor and assistant treasurer; then general freight and passenger agent; then general freight agent; then general manager; and later, vice-president, giving up that place upon my election as president of the Northern Pacific Company in October, 1903. Until within the last six or seven years

my relation to the business was such that I was in very direct touch with the details of the freight and passenger business in the Mississippi and Missouri valleys. Since then my work has been more general and in the line of administration, operation, and construction. My remarks, therefore, will reflect the views formed during the business experience just outlined, by one who has always tried to look at the whole subject in a reasonable manner—not only as a railroad officer and employee and railroad owner in a small way, but also as a citizen interested in the general development of the western country.

I shall not burden you with many statistics and figures, because you have heard from other sources about all that can be said or presented along those lines. As I am not a lawyer I can not discuss the legal aspect of the question at issue.

I agree with the position of the President of the United States as set forth in the following language of his message to Congress on December 3, 1901:

> It must not be forgotten that our railroads are the arteries through which the commercial lifeblood of this nation flows. Nothing could be more foolish than the enactment of legislation which would unnecessarily interfere with the development and operation of these commercial agencies.

I also agree with the position of the President, stated in the following language in his last message to Congress:

> Above all else we must strive to keep the highways of commerce open to all on equal terms; and to do this it is necessary to put a complete stop to all rebates. Whether the shipper or the railroad is to blame makes no difference; the rebate must be stopped; the abuses of the private car and private terminal track and sidetrack systems must be stopped * * *.

In fact, I think all railroad owners and officers agree with the position stated by the President in the words just quoted. The great bulk of the freight in the United States is now moving under that principle. I believe that there is much exaggeration and misconception about the alleged abuses that exist. There is no question of "railroads versus the people." There is a demand for the correction of certain abuses and failures in the management of railroad business, resulting, unfortunately, in much confusion of ideas, which may produce results very detrimental to the growth of business in this country, and therefore harmful to the railroads. On the Northern Pacific road, for example, comprising about 6,000 miles, there are no rebates; there are no private car abuses; there are no sidetrack abuses. There are, of course, differences of opinion about the relations of rates, as there always will be under any system. Railroad business, being conducted by human beings who are no more infallible than those in other walks of life, is not conducted with absolute perfection. For the errors made in the conduct of the enormous railroad business of this country the plan of control and management should not be condemned and dislocated any more than that the general scheme of our Government should be condemned because there are frauds in the administration of the Land and Post-Office Departments, and inefficiencies in the administration of the Government in places.

It is my sincere belief that a very, very large proportion of the transactions made daily between the railroad owner and the railroad user go on without friction, without difficulty, and without hardship or injustice to anyone. Not long ago I caused a calculation to be

made as to the total number of individual freight transactions on the Northern Pacific road in a year. In round figures, there were something over 3,000,000 separate freight transactions, or over 9,800 a day. Each one of these transactions involved the use of freight tariffs, the making of bills of lading, waybills, the loading and transporting of the freight, the safe delivery to the consignee, the collection of the money, and the issuing of receipts. During the same time there were claims against the railroad for loss and damage and other errors and failures connected with this large number of complicated transactions of about 1 per cent of the shipments. Considering the complexity of the business and the large number of employees involved, this record, I believe, is creditable and shows reasonable stability and efficiency in conducting the business. What is true on the Northern Pacific is doubtless true on other roads, and most of the transactions between the shipper and the railroad are completed without any feeling of injustice or that there is something radically wrong with the American railway system. The same thing is true to even a greater extent in the passenger business. Passengers get on and off trains all over the country without feeling that they have any complaint against the railroads as to discrimination or injustice in rates, except in rare intervals.

With the growing railroad business of the United States, the distribution of railroad securities, and the demand for manufactured articles used by railroads, it is not an unfair statement to say, counting railroad employees and owners and employees in industries furnishing material and supplies to railroads, that there are from 2,500,000 to 3,000,000 people whose daily bread and butter and general position in life and that of their families depend very largely upon the railroad business and its development along wholesome lines. Multiply this number by 4 and we have 10,000,000 to 12,000,000 people, or from one-eighth to one-seventh of the population of the United States, who either fail to realize the importance of the policy under discussion, or who, if they do realize it, are generally silent through lack of opportunity or ability to make any statement in their own behalf.

Most of these people are attending quietly to their duties on the railroad, in the factory, or in their home, and they form a very important part of the population of this country. Ultimately any step under which the Federal Government exercises the power of fixing the actual rate to be charged by railroads will affect them adversely by introducing an economic force into their scheme of life which will mean repression and curtailment of the chance of success due to hard individual effort. In the clamor for fixing railroad rates, much of which comes from those who want some personal advantage, either political or commercial, from those who hope to obtain, through governmental aid, success which they have not obtained by their own energy and ability, and from those who believe in socialism, the rights of this large number of people should not be lost sight of, and they should not have imposed upon them governmental conditions that do not obtain in other forms of commercial and business life in this country. When this large class of people come to understand fully what is contemplated their voice will be heard most plainly against the socialistic plan now proposed.

The newspapers comment more or less upon the fact that great fortunes have been made out of the railroad business, and name a small number of individuals who, through superior ability, energy, foresight, and hard work, have built up large fortunes. From the constant discussion of this subject by the daily press there is a more or less prevalent opinion that the railroad business furnishes a field for the rapid accumulation of money, and, to a certain extent, that this money comes unjustly from the public. It is true that a few large fortunes have been made in the railroad business, but no more than in the iron, coal, lumber, manufacturing business, if as much. They are the capital prizes in the lottery of life that are open to every ambitious American. But of the great army of railroad owners, officers, and employees, a very small proportion obtain more than enough for their daily living, whatever their position in society may be, and some saving for old age and their children outside of that.

As a class, the railroad officer and employee is as conscientious, high-minded, and devoted to the interest that employs him as any men in any other walks of life, and he appreciates that the best interests of his employer are served by building up the tributary country, which can be done only by adjusting rates and giving service that will develop the natural resources. He is also fair-minded and anxious to be fair and square with the user of the railroad, as well as with the company, because he realizes that the greatest success to the company comes from fair treatment to the patron; in other words, a daily application of the "square deal."

Take them as a class, moreover, the income received by the railroad officer and employee is no greater than that received by those interested or engaged in other business pursuits in the United States requiring the same ability and experience, and in the case of the railroad owner it is less.

We hear the expressions "railroad problem" and "railroad question" very often. There is nothing mysterious or unusual about the railroad business, and the problems and questions surrounding it are the same as those affecting other commercial business.

In considering the railroad business, however, the fact should not be lost sight of that the business of building, managing, and operating railroads is comparatively new. Only within the last thirty years has it assumed the great importance and proportions that it now has. The work done by the American investor, railroad builder, owner, and manager in the last thirty years has been enormous in producing the present railroad system of the country—a system which on the whole is one of the most wonderful things ever produced by human energy. The performing of all this work has required many men, much money, making of great mistakes, wasting of money before obtaining the present roads, learning by experience, training of men to administer the business, evolution of methods, and the wonder is not that there are some abuses and failures in the conduct of the business, but that there are not more. The railroads of the United States are to-day in an unfinished condition and need to attract capital, administrative talent, and the wage earner. The country wants in the railroads the same things that are being furnished in older and smaller countries, like England, France, and Germany—that is to say, better road, track, and bridges, higher speed trains, greater

safety, more beautiful station facilities, all of which means an enormous investment of capital and a considerable period of time, the training of many men, and the least interference possible with the development of the business. Hamper the railroads by too much restrictive legislation and take away from the man who has to provide the money for these expanded facilities the naming of the price to be charged for the use of these facilities, and this expansion will gradually be stopped. "You can lead a horse to water, but you can not make him drink." You can give to a branch of the Federal Government the power to fix an actual rate which the owner of property shall receive for the use of his property, but you can not make the owner of the property improve his railroad, buy more cars, build more branch railroads, and expand his business.

That the abuses connected with the railroad business (small in number as I believe them to be when compared with the total volume of trade) are not affecting materially the general growth of business in the United States is evidenced by the fact that everywhere you go in this country, from the Atlantic to the Pacific, you see thriving towns and cities, expanding agricultural productions, demand for and growing values of lands, increasing manufacturing capacity, increasing ownership of homes, well-employed labor, demand for more and better transportation, and a chance for the conscientious, sober, and industrious man to improve his standing no matter what business he may enter.

If railroad rates as a whole were unjust, unreasonable, wrongly discriminatory, as between individuals and localities, this condition would not exist. It has been claimed that the power to name a railroad rate should be lodged with some other authority than with the railroad owner, because railroad transportation enters into the life of the people in every way, and, therefore, the railroad owner should not name that price. Is it not also true that the price of producing power enters into the life of the people in every way? The price of a pair of shoes, of a coat, or of any manufactured article, depends in part upon the cost of the power used to run the machinery that made the articles in question. If the final decision to fix the actual rate to be charged by the railroad is to be given to some branch of the Federal Government because a railroad rate enters into everyone's life, it is only a short step to say that the final decision as to the price of coal, or of water power, or of any other agency producing power should be fixed by some governmental authority.

Again, the price of labor enters into the cost of the living of everyone, and to a greater extent than the price of railroad transportation or the price of power, because the price of labor is the largest single item of expense to the railroad and to the coal mine.

If it is wise for the Federal Government to *fix* the price of railroad transportation because of its affecting everyone in the nation, why is it not equally wise to *fix* the price of coal, of electricity, and of labor? And where are you going to stop?

One argument advanced for changing the present Federal laws about rates is that there has been during the last few years a gradual elimination of competition, and there is a fear that rates will be so controlled that they will not fall gradually, or that they will be advanced arbitrarily.

That there has been some elimination of certain kinds of competition is no doubt true. It has resulted, however, very largely from

the better experience and sense of the railroad owner or manager who, each year, is conducting his business on a more scientific basis, so as to produce the greatest amount of good transportation at the lowest possible figure, and who has eliminated considerable waste and foolish competition, thus permitting a great decrease in rates during the last twenty years. There has been, however, no elimination of competition as to markets, which is the real competition in a country so large as the United States. The woolgrower in Montana must sell wool in competition with the woolgrower of Arizona, of Kentucky, of Ohio, and of Australia, and the railroads, in order to help develop Montana, Arizona, Kentucky, and Ohio, are all striving to place the wool of their respective States at the point of consumption at the lowest price possible. The Northern Pacific does not fix the rates on wool from Montana. The price of wool in Boston is affected by the number of sheep on the Australian farms and the amount of free tonnage controlled in Liverpool, elements beyond the control of the American railroads and the American Government. The Northern Pacific can not charge an infinitesimal fraction of a cent more than will enable the Montana man to place wool in the common market at a common price, grade for grade. The makers of woodenware in Menasha, Wis., and in Tacoma, Wash., are competing to reach the same markets, and the railroads leading from those two places, through self-interest, are adjusting the rates as low as they can, in order to help develop the trade in their respective territories. The producers of lumber in Idaho, Montana, and Washington, and the producers in Minnesota, Arkansas, and Louisiana are all trying to sell in the markets of this country and abroad, and the railroads from the respective districts, if the business is to move at all, must meet competitive prices and adjust rates accordingly.

Examples without number could be given of this competition of markets in raw material, in all sorts of manufactured articles, and in products of the mine and farm. In fact, this competition as to markets has been so marked in the case of live stock that rates have been brought down to such a point that the railroad owner is hesitating about increasing his investment in cars for the purpose of transporting live stock, because the margin of possible profit in the business is so small.

Another potent cause that tends to prevent an advance and to continue a general fall in rates is that the railroads, in order to succeed at all, must do the largest volume of business possible over their rails, as the cost decreases somewhat as the volume increases; so the officers of the railroads are continually endeavoring to increase the volume of their trade and stand ready to reduce charges whenever it is clear that a development of country and an increase in tonnage will result.

There is an erroneous idea that rates are fixed arbitrarily, and that a few so-called "railroad magnates" fix and control all of the rates in the United States, and that their chief idea is to *fix* them high. Nothing can be further from the truth. A railroad rate is the result of a large number of commercial and geographical forces and conditions working one upon the other; consultation between shipper and railroads; consultation between officers of one railroad and another; a study of all the conditions surrounding the problem, of the density

or volume of business, of grades, engines, car supply, and cost, and this process is going on every day among thousands of railroad officers and shippers.

Another element that is effective in the direction of causing a gradual reduction in rates, if the railroads are left reasonably free, is the fact that railroad transportation can not be stored up and saved for future use. The railroad owner and manager never can strike an exact balance between the demand for transportation and the supply. He has, therefore, on his hands at all times some unused transportation—empty cars standing on side tracks, engines waiting in roundhouses, a large demand for them at one time of the year and a decreased demand at another, a demand to handle business east but nothing west. He, therefore, goes to work to increase trade by seeking to adjust rates so that he can use up part of his idle transportation by moving products between points where there was no such movement before.

It is claimed that if the Commission have power to *fix* rates, such power would only be exercised occasionally, and that the power to *fix* a given rate upon complaint does not carry with it the power to fix rates generally. This is not true. Rates in this country are so complicated, are so related to one another, different cities and sections are so competitive, that a change in one rate will force changes in many other rates.

Rates really fix or adjust themselves just as prices in all business transactions fix and adjust themselves. The man who slaughters cattle, hogs, and sheep can not arbitrarily fix the price to be charged for the different parts or products of the various animals—so much a pound for tenderloin steak, so much a pail for lard, so much for hoofs, so much for spareribs, nor can anyone else. His prices are fixed for him by competitive conditions, and unless he receives, on the whole, for all of the different kinds of things obtained from the animals enough to pay the total cost of his business, and some profit, he ultimately abandons his business. The railroad business is very much more complicated than the business of the butcher, and there are almost an infinite number of prices in the business which are fixed and adjusted just as the prices for the butcher are fixed.

If one man—if the Government itself—owned all the railroads of the United States, the rates could not be fixed mathematically at a central headquarters and permit any development of business.

Regulating is one thing and *fixing* is another. The present law grants ample power to regulate, to say what is unfair and unjust, and if it were enforced fairly and if the powers now in the hands of the Commission were used, much of the alleged popular demand for giving the powers to *fix* the actual rate would disappear. It is a question whether we are not going even too far in the direction of regulating for the best expansion of trade. Our neighbor, Canada, encourages its railroads so much that to-day products of United States factories are reaching the Pacific coast via Canada in constantly increasing quantities because the Canadian roads can and do make rates which the American roads can not make without being charged with violation of the interstate-commerce law.

The demand by the Commission that every inland proportion of the rate necessary to move products between the United States and foreign countries be published, is a restriction that hampers the

American roads in the efforts to expand trade and increase foreign commerce.

What good does it do anyone in the United States to have carloads of manufactured articles delivered at Seattle, for instance, by way of the Canadian Pacific, when the United States labor, United States coal, and United States railroads could haul the product all the way?

What harm does it do anyone in the United States if locomotives are moved from Schenectady, N. Y., to China via United States railroads and Puget Sound rather than via New York and the Suez Canal, even if the rate from Schenectady to Puget Sound on the locomotives destined to China is less than on those used at Puget Sound, and even if the rate fluctuates day by day or week by week to meet competition of the Suez Canal or the German maker of locomotives?

What, then, are the complaints? Those charged with the duty of studying and administering the great railroad business of the country receive complaints of various kinds. West of the Mississippi and Missouri rivers they may be classified as follows, in the order of their relative importance:

1. Complaint of insufficient facilities.—This, in the growing, progressive, and expanding States of the West, is a steady and constant complaint, and it requires much time, money, and energy for the railroad owners and officers to keep the supply of transportation up to the demand. The complaints come in for more freight cars, for more passenger trains, for better passenger stations, for more sidetracks, for more switch engines, for undercrossings and overcrossings in growing cities, for branch lines into new and undeveloped sections of the country, and every railroad west of the Mississippi must spend every year sums equivalent to from 5 to 20 per cent of its gross earnings for providing what is needed on the road already in existence, not counting sums of money that must be raised for building branch lines and new lines. Would bureaucratic rate fixing stop this complaint, or would it make it worse?

2. Complaints of the relation of rates between communities.—The fact that communities are growing and strive each to outstrip the other in the West produces most energetic demands by mercantile organizations, commercial clubs, and other agencies that this town or that town have the rates so adjusted that it can enlarge its sphere of operation and diminish the territory of its rival community. Much of this complaint is caused by the competition of water routes and Canadian roads that are not subject to the interstate-commerce law. The officers of the freight departments of the great railroads spend as much time, if not more, on this subject as on any other, making a constant study of the relation of rates and endeavoring, through consultation with all interests and without fear or favor, to harmonize the conflicting demands of the various communities. A commission could not satisfy this class of complaints and would be driven to a basis of rates based on distance.

3. Complaint of relative rates between individuals.—Many individuals continue to ask the railroads for a better rate on their particular business than may be used by their competitor, although this request for personal preference in freight rates is diminishing steadily. Let it be understood that the Federal authority will enforce the existing law against both shipper and railroad and this complaint will stop.

4. Complaints that the power of deciding questions is being centralized too much.—The railroads, in their effort to conduct their business without personal and unjust discrimination, have centered the power of deciding various questions in their main offices, with the result that sometimes there is considerable delay in deciding questions. A man wants a sidetrack to his warehouse, and in order to decide that question properly considerable information must be obtained and some one has to render a decision whether the company shall spend the $1,000 needed to furnish the track. Another man will build a manufacturing plant if he can get the rates that will enable him to reach his market in competition with some other point. In order to decide this intelligently an investigation must be made of prices, cost of doing business, the relation of other factories producing the same article, and all of the other factors that enter into the making of the price of his product at the point of consumption. This takes the time, thought, and study of a great many men on the railroad and causes some delay. Give a commission power to *fix* rates and you would not help this difficulty, but would increase it.

5. Complaints that the rates charged by the railroads are in themselves too high.—This complaint is not very common, because as a whole rates are very low, and in most cases the man who pays the freight is satisfied with the rate in itself, provided he feels sure that no one else is doing better than he is.

There are, and always will be, abuses in the conduct of railroad business, as in the conduct of other business. That the abuses of which there is now complaint will be corrected by taking a given number of American citizens and making them officers of the Government, and charging them with some of the same duties that are now performed by the same class of people as private citizens is very doubtful.

The rebate is one abuse, but that is practically gone as to the freight business. There remains personal discrimination in the passenger business by means of the pass or free ticket.

Discriminations between localities.—Discriminations between localities exist and must always exist in a country as large as the United States and with as many varying conditions. Such discriminations are not caused by the railroads, but are the result of geography and competition. The present law, if enforced, is ample to prevent any "*unjust*" discrimination.

High rates.—High rates do not exist, as a rule, and all evidence and the general conditions point to the fact that there is no real ground for apprehension that rates will be materially higher than they are now, if the natural play of commercial forces—geographical and market competition—is allowed to go on without artificial interference. In fact, if railroad owners are not hampered and restricted too much, and are encouraged to perfect the means of transportation and the expansion of business, the rates in this country will probably continue to fall gradually, so that they will be below the present very low average of three-fourths of a cent. On the other hand, discourage the railroad owner, and make the Federal Government the power to *fix* the actual rate, and the tendency will be to an average higher rate.

If the Federal Government is to *fix* the actual rate, it must always

fix it high enough to pay to the owner of the property cost, depreciation, and interest.

If the Government does not so fix each rate, then it must provide means in some way to reimburse the owner of the road for any loss. To-day in handling and expanding business the railroad owner takes the risks of business and handles some at cost or less, and if he loses he must blame himself and pocket the loss. The Government could not force rates upon him that are noncompensatory, and the result will be that under a system where the Government *fixes* the actual rates there will be a checking of the movement toward lower rates by the voluntary action of the roads in meeting commercial conditions.

The private car and private side track.—There are some abuses connected with the private car, but the private car has served a most useful purpose during the last ten or fifteen years in helping to care for the commerce of the country. The money and energy of the railroad builder in the last forty years have been very fully occupied in trying to produce the railroad, and he has not in every case kept pace with the demand for special facilities. The owner of the private car stepped in and said, "I will provide cars for fruit and perishable produce," and the fact that he did so helped to develop the orange business, the butter, egg, and dairy business, the fruit business, and the meat business. The owner of the car naturally has tried to get as good a return as possible on his investment, and in some cases there have been unreasonable charges. In the evolution of the railroad business, however, now that some other parts of the railroad are more nearly completed, the tendency is for the railroads to eliminate the private car and provide their own special equipment, and this alleged evil, if left alone, will correct itself in time, because a railroad, like every other business, must make use of all by-products and cut out all waste, and will therefore buy and own all cars needed for its business.

Railroads have naturally been unwilling to spend the money, in every case, for private tracks for an industry the success of which was uncertain. As a result, those promoting a given industry have put in their own side tracks, furnishing their own switch engines within their works, and delivered their own business to the railways. Incident to this there have been some cases of excessive payments to the owners of private side tracks and private switch engines, but here again the evolution of the business and the better experience and judgment of the railroad officers are eliminating any such payments.

Remedies.—What are the remedies for these abuses? In my humble judgment these various abuses will correct themselves through the good sense of the American business man and through the friction of business.

Enforce and obey the law.—In addition, the interstate-commerce law, with its amendments, provides ample machinery for correcting absolutely every discrimination as between individuals. If that law is effectually enforced it will drive out the few remaining cases of personal discrimination as to freight shipments. I think the effect on railroad management, on the governmental machinery, and on the public generally, would be good if the principles of the interstate-commerce law were applied strictly to the passenger business as well as to the freight business. That is to say, I would stop the making of preferential arrangements for transportation of passengers free.

or at reduced rates, because they occupy positions of more or less power, responsibility, and trust. As is well known, it is customary for the officers and employees of the Government—municipal, county, State, and Federal—to ask for and in some cases demand and to receive more or less transportation; and some also for their family and friends.

The revenue involved in this practice is relatively insignificant, because the great bulk of this travel would not take place if a free pass or reduced-rate ticket was not given. The effect, however, on the mind of the public is bad, and indirectly the impression is created that the railroad owner, through the free pass, has a great deal more influence than he really has; that there is much more interference by the railroad in the machinery of the Government than there really is, and that there is a much greater obligation on the part of the recipient of the pass than there really is. Most passes are given to the officers of the various governments as a compliment, and not with the idea that any direct benefit is to be received—possibly with the hope, in some cases, that any unfair action within the power of the receiver of the pass will be postponed or prevented. In the long run, however, the railroad owner, the Government officer, and the public generally would be in a better relation each to the other if this discrimination as to passenger transportation were eliminated. Such a step would go far toward making the general public feel that the railroad was not interfering improperly with politics, and that it did not have something within its power to give away to lawmakers and others in authority that other people did not have. Let the officers of the Government, from the highest to the lowest, set the example of *obeying the law* by paying for their railroad travel the same rates charged the general public.

Unjust discrimination.—The interstate-commerce law also has the power to prevent unjust discrimination between localities. Let the Commission be active in using the power it now has, in stating when there is unjust discrimination. Their decision and the force of public opinion, the pressure of business men, the increasing good sense of the railroad owners and officers, will all be elements in determining a new relation between the communities.

Private cars and tracks.—As to private cars and private side tracks, I believe that any difficulties or abuses incident to their use will eliminate themselves, just as the foolish custom of paying ticket commissions eliminated itself by the voluntary action of the railroads. If, however, there is a feeling that the Government must in some way try to hasten the inevitable result, the present law seems ample to cure the evils, provided the Federal Government will use its machinery for enforcing it. If more law is needed, a very simple one will correct the alleged evil. Let it be the law that no payment shall be made by a railroad or by an individual for the use of, or service furnished by, a private car or private side track that is any greater than the payment made contemporaneously for the same kind of car and for the same kind of service by the railroads each to the other. Then, if the railroads are exchanging cars between themselves at 20 cents a day, or at 50 cents a day, that is all the private car owner will get; if railroads furnish ice at $2.50 per car, that is all the private car owners will receive; if the railroads switch in

Chicago for from $2 to $5 per car, that is all the owner of the private side track would get in that locality.

SOME OBJECTIONS.

The attempt by the Federal Government to fix in detail the exact rates to be charged by the railroads will be unfortunate for the United States.

Un-American.—Such policy is un-American in that it subjects a large part of the citizens of the United States to an economic restriction that does not apply to those engaged and interested in other classes of commercial, industrial, and agricultural business. By having the Government *fix* the price of railroad transportation, an obstacle would be placed in the way of the highest success of individual effort that will gradually result in depressing and repressing the efforts of those interested in or engaged in the railroad business and will reduce all to the dead level of mediocrity.

Unjust.—Such a plan is *unjust* because it would apply to the large number of American people interested and engaged in the railroad business, a rule not applicable to others. In good faith they have invested their time, their training, their energy, and their money, with the idea that there were rewards for success, as in all other business. They are taking and have taken great risks, as do all who are engaged in businesses, to obtain the benefits of success, if that comes, just as they must submit to the result of failure, if that comes.

Unnecessary.—Such a plan is unnecessary because, as has been presented to you by various speakers, the development of the railroad business in this country has been such that we have the most effective service as a whole, the lowest rates as a whole, the highest wages as a whole, and the most progressive management of the business as a whole, of any country in the world. And all this has been developed in fifty years by the energy, ability, and ingenuity of the American business man. With this record in the past, why is it necessary to take even a chance of delaying or changing this marvelous development? Or, to quote the President again:

> Nothing could be more foolish than the enactment of legislation which would unnecessarily interfere with the development and operation of these commercial agencies. * * *

Unwise.—Such a plan is unwise, because it would tend to a centralization of power in the making of the rates for the country. As I stated earlier, one of the complaints made now is that the decisions are not made promptly enough. What will be the inevitable effect upon the rate-making machinery of the railroads, if every rate can be challenged, and the power of fixing it is placed with a Commission? The natural effect will be that the shipper will not be satisfied with the rate named by the railroad and the railroad will hesitate to make a new decision, knowing that it is likely to be appealed from. The Commission will be, in time, deluged with complaints. In trying to settle the questions submitted to it, the Commission would have to adopt one of two courses. It would either try to do exactly what the railroad owners are doing—adjust rates upon business principles, taking into consideration every element that affects the movement of commodities, weighing every situation, discussing the claims of communities and shippers, and finally rendering a decision which,

when made, must be the rate until the same process is gone through with again. No matter how wise or able one set of Commissioners may be, it would be physically impossible for them, sitting in Washington, to promptly dispose of the cases submitted to them. Then, the suggestion would be for additional commissions, and in time the Federal Government would have as many people engaged in the rate investigation, rate discussion, and rate-adjusting business as the railroads now have. In other words, they would become the business managers of the railroads, but they would have no responsibility for results—no responsibility of ownership, no interest in providing large sums of money necessary to keep the railroads equal to the business—no responsibility or incentive for increasing business and developing new territory.

If the Commission did not adjust the rates on business principles, and it could not, the Commission would have to adopt some simple basis to be applied to everyone without regard to geographical conditions or to previous commercial development. It is manifestly impossible for the Government to fix the rates on the postage-stamp principle, because that system creates unjust discrimination to the greatest extent conceivable. To-day mail is transported from San Francisco to New York at as low a price as it is from Washington to Philadelphia. Either the price from Washington to Philadelphia is too high or the price from San Francisco to New York is too low, and this principle could not be applied to the fixing of freight rates unless the Government is prepared to make good any deficiency in revenue from the taxpayer as a whole.

The course that the Commission would be driven into, and that every State commission is gradually being driven into, is to adopt a mileage basis of rates. The effect of such a basis on a country the size of the United States, with its past history of commercial development, is appalling to one interested in the growth of the country. If, in the beginning of the railroad and business development of this country, rates had been fixed arbitrarily on the basis of mileage, the States west of the Mississippi River would still be thinly populated—with few railroads and with little business of any kind. Inland cities without access to water transportation would not have been built up, and the whole growth of the railroad and commercial system of this country would have been different. Fortunately for the growth of this country the railroad owners and operators did not adopt a rigid mileage basis of rates, and as a result the country has grown, agriculture has grown, diversified manufacture has grown, and there has been an equalization of commercial situation that has permitted a development of cities and communities which, under the mileage basis, would all have been congested in many fewer places.

Give the Commission the power to fix rates and the land values of the agricultural States west of the Mississippi River would be at once affected. An advance of value will be stopped and a decrease in value will result. To-day the railroads, in their desire to develop territory, make the rates on wheat from North Dakota, on wool from Montana, on lumber from Washington, on butter from Iowa, so as to compete with similar products raised in Ohio, in Kentucky, in Mississippi, in Pennsylvania, in New England. If the Government

has to fix the rate, what right will it have to refuse to the wool grower of Kentucky, the wheat grower of Ohio, the lumber producer of Mississippi, the butter man of Pennsylvania, the same rate per mile that is charged the producer in North Dakota, Iowa, Montana, and Washington? No matter how low the rate is made for the first 10 miles or for 1 mile of railroad transportation, when the haul is 1,000 or 2,000 miles and the mileage basis is used the rate will be so high that the business will not move.

On a mileage basis of rates the business of the commercial centers west of the Mississippi would be destroyed. Cities on the ocean and Great Lakes would have advantages, but the inland cities and agricultural districts would stop developing.

When the great agricultural and manufacturing population in the States between the Allegheny and the Rocky mountains realize what a mileage basis of rates means to them and to their children—and they will be awake to the fact in time—there will be a *real* outcry about railroad rates compared to which the present stimulated complaint will be as nothing.

Far better the difficulties existing under the present system of commercial freedom than to turn to a rigid governmental plan of fixing railroad rates.

Senator KEAN. Mr. Elliott, we had a visit the other day from an eminent citizen of Massachusetts, Mr. Brooks Adams, who represented the chamber of commerce at Spokane. Out there in Spokane they think they are unjustly discriminated against. I suppose you have heard of the case?

Mr. ELLIOTT. Yes, I know; Mr. Adams and I have talked it over very often. Like all cases of discrimination against localities, there are two sides to that. Spokane, in spite of this alleged unjust discrimination, is about the most prosperous city on the Northern Pacific Railroad.

Senator KEAN. He seemed to think that was an answer to the natural advantages of Spokane.

Mr. ELLIOTT. Well, I suppose you do not know why the Spokane rates are higher than the Pacific coast rates?

Senator DOLLIVER. I did not get from Mr. Adams just how much higher they are.

Mr. ELLIOTT. My recollection is that the Spokane rate is the rate to Puget Sound plus 80 per cent of the local back.

Senator DOLLIVER. Now, do you refer to the transcontinental rates?

Mr. ELLIOTT. Yes.

Senator DOLLIVER. He was complaining of rates from points interior where this ocean competition did not affect it. I think his complaint was that some discrimination prevailed in rates from Chicago.

Mr. ELLIOTT. Yes, that is true; but the Chicago manufacturers are competing with the manufacturers on the Atlantic seaboard.

Senator DOLLIVER. So you have to put them all on the same basis?

Mr. ELLIOTT. Oh, yes; about.

Senator CLAPP. It would start in with the Twin Cities?

Mr. ELLIOTT. Yes; I think the rate begins there. The rates from St. Paul to Puget Sound on some commodity, we will say, is 75 cents, and the rate back from Puget Sound to Spokane, the local rate, is

20 cents. Eighty per cent of that would be 16 cents, making the Spokane rate 91 cents.

Senator DOLLIVER. Has the railroad as much interest in putting an end to such an apparent injustice as anybody else has?

Mr. ELLIOTT. I think it has more.

Senator DOLLIVER. You have done the best your wisdom could suggest to reduce that discrimination to the minimum?

Mr. ELLIOTT. We have up to the present time, but we don't think we have finished.

Senator NEWLANDS. You have improved conditions?

Mr. ELLIOTT. Yes. We had a long meeting with the Spokane people shortly after I became president of the Northern Pacific. That is, our traffic people did. There was a new adjustment made there which the Spokane people thought was much better. The result of it is that the Puget Sound people are all up in arms now; so there you are. You have the Puget Sound people on the one side and the Spokane people on the other.

Senator DOLLIVER. There must be a lot of merchandise passing from the interior to the coast where this danger of prospect of ocean competition is somewhat mythical.

Mr. ELLIOTT. To the coast?

Senator DOLLIVER. Yes.

Mr. ELLIOTT. Very little.

Senator DOLLIVER. Does that transportation affect all varieties of merchandise?

Mr. ELLIOTT. It would not affect the very highest grades, but before I went to the Northern Pacific road they made some advance, I think, in those rates, with the result that there was an immediate increase in the volume of business going there via the Horn, or the Panama Railroad; so it is simply a question of transcontinental roads doing a part of that business at a low rate or none of it at a high rate.

Senator CLAPP. Can you state approximately the proportion of the trade to the Sound that goes by water?

Mr. ELLIOTT. No, I could not. I have not got those figures in my head. I know it is quite a substantial proportion.

Senator CLAPP. Is it not about one-quarter?

Mr. ELLIOTT. I think it is more than that. The Spokane situation is a very difficult one. We do not deny that a bit. It is one of those things that has got to be worked out by evolution. Spokane as a big city is only about 12 years old, and the conditions have changed out there and are changing.

Senator NEWLANDS. What is the population of Spokane?

Mr. ELLIOTT. It must be 85,000 people.

Senator DOLLIVER. Now, you spoke of a certain interference of the Interstate Commerce Commission with the traffic of these northwestern roads to the Orient?

Mr. ELLIOTT. Yes.

Senator DOLLIVER. And I think it is only justice to the Commission to call your attention to the fact that instead of interfering in that matter against these roads, if they interfered at all, it would appear from their records that they interfered in favor of the roads, by a very unusual stretch of authority in practically suspending the act of Congress.

Mr. ELLIOTT. You mean the long and short haul clause?

Senator DOLLIVER. I mean the publication of rates.

Mr. ELLIOTT. Well, you know, at one time they started an interference with it, and that was a very difficult thing to do.

Senator DOLLIVER. But the law seems to require that those rates shall be published.

Mr. ELLIOTT. Well, that is the question, is it not?

Senator DOLLIVER. I don't think the question has ever been made.

Mr. ELLIOTT. It is an open question, is it not?

Senator DOLLIVER. I think hardly.

Senator CULLOM. Is it an open question as to whether they should be published?

Mr. ELLIOTT. I think lawyers disagree on that.

Senator DOLLIVER. At any rate, the interference of the Commission was not to urge a publication, but to suspend as far as their order might the obligation to make the publication, and therefore I think the Commission very justly complained of your statement, and also the statement of Mr. Hill, that they made a hostile interference in that matter against your roads.

Mr. ELLIOTT. That would come back as to what was the legal interpretation of the rate-publishing feature of the law, and the doctors disagree on that, as I understand it, and whether it has ever been settled in the courts or not I do not know.

Mr. Commissioner FIFER. The last time the question was before the Commission we called in all the principal traffic men throughout the country and had a hearing on that. I think that was about a year ago; and the Commission announced an opinion in the case and decided that the law required the publication of those rates, but pointed out the difficulties of it, and told the railroads it would not be enforced until the railroads would have time to go before Congress and get a modification of the law, and there it stands just in that position.

Senator DOLLIVER. I have called your attention to it in justice, as I thought proper, to the Commission.

Mr. ELLIOTT. I do not want to be quoted as saying anything in criticism of the Commission—that is, as to its personnel. It is the general question as to whether they are in position to make those conditions. I think it is a fair statement that the Commission has at times felt that the railways were accepting a rate on export and import commodities that was too much below the published rate on domestic products at the same time. Am I not right in that, Mr. Knapp?

Mr. Commissioner KNAPP. I do not know.

Mr. ELLIOTT. I know when I was in the freight business twelve or fifteen years ago that question came up several times on freight via New Orleans. I do not know that an order was made by the Commission, but the opinion was expressed by them that it was not fair for the United States railroads to accept low rates on commodities for New Orleans, which were materially lower on the domestic at the same time.

Senator DOLLIVER. That is a very interesting question.

Mr. ELLIOTT. Yes.

Senator DOLLIVER. You spoke of the freedom and comfort of the Canadian Railway people in the management of these traffic managers. It has been brought to our attention, and we have here a copy

of a statute recently enacted in the Dominion of Canada, which appears to very seriously disturb this freedom and comfort, provided this system of regulation through commissions would constitute an interference.

Mr. ELLIOTT. Yes.

Senator DOLLIVER. Are you familiar with the operation of that new Canadian statute?

Mr. ELLIOTT. No; I am not.

Senator KEAN. Mr. Tuttle testified that it had never been put in force.

Senator DOLLIVER. It has been on the statute books for a year.

Mr. ELLIOTT. I only know this: That in the month of April the business of the Canadian Pacific road into Seattle from points east of the Mississippi River increased nearly 100 per cent and the business of the Northern Pacific increased only 15 per cent.

Senator DOLLIVER. Now, there must be an occasional controversy as to whether a rate between two given points is reasonable or not, is there not?

Mr. ELLIOTT. Yes.

Senator DOLLIVER. The shipper claiming that one rate is unreasonable and the road insisting that a higher rate would be just and reasonable?

Mr. ELLIOTT. Yes.

Senator DOLLIVER. Controversies oftentimes involve important business interests, do they not—shipping interests?

Mr. ELLIOTT. They do as to the relation of rates. I would not say that of the rate itself we hear very much about it.

Senator DOLLIVER. You mean the relation of rates as between various kinds of traffic?

Mr. ELLIOTT. I do not remember hearing any complaints about the rates between different kinds of traffic as compared with the rate on another kind. The complaint is as to the relation of rates from town A to a given point as compared with town B, but not in the rate itself.

Senator DOLLIVER. It is very easy to believe that occasionally a controversy involving substantial business interests would arise as to whether or not the rate fixed by the road was reasonable and just?

Mr. ELLIOTT. Yes.

Senator DOLLIVER. Now, what machinery would you suggest for the settlement of a controversy of that sort between the shipping public and the railroads?

Mr. ELLIOTT. The machinery which is now in existence.

Senator DOLLIVER. What machinery do you refer to?

Mr. ELLIOTT. The friction of commerce laws against unjust discriminations—laws against extortion.

Senator DOLLIVER. Do you think the present appeal to the court is sufficient?

Mr. ELLIOTT. Ample.

Senator DOLLIVER. But an individual may sometimes be unable single handed to go into court with a great railway corporation?

Mr. ELLIOTT. Well, I suppose that might happen, but it does not, does it, as a matter of fact?

Senator DOLLIVER. Very often a shipper might not desire to invite the hostility that would be engendered by investigations of that sort and conducted by him personally against a great corporation.

Mr. ELLIOTT. I never knew of such a case.

Senator DOLLIVER. You never knew a shipper to have hesitation about pushing his rights because he was afraid he might get in a worse position than before?

Mr. ELLIOTT. Never; he runs no risk absolutely with that sort of thing.

Senator DOLLIVER. What would be the objection, supposing that a controversy as to the reasonableness of a given rate should arise and the shipper would not be able to adjust it with the carriers, to having the Interstate Commerce Commission here determine that question, or some other tribunal, so as to bring it to an effective adjudication?

Mr. ELLIOTT. You have that now.

Senator DOLLIVER. How?

Mr. ELLIOTT. You can go to the Interstate Commerce Commission and complain of an unjust rate and the Commission decides whether it is unjust or not. They have preventive legislation.

Senator DOLLIVER. They decide it is unjust, and then they have to go into the courts and pursue a litigation that lasts world without end in order to get the decree of the court as to whether it is unjust or not.

Mr. ELLIOTT. Sometimes they do, but in a great many cases the railroad and the shipper bow to the decision of the Commission, and say, "This is unjust, and we will fix up a new rate." And they do, and everybody goes away happy.

Senator DOLLIVER. But suppose they do not. Now, what would be the objection, since the Commission is now clothed with the power to say whether the rate is reasonable or not, and if found unreasonable, to order that it be discontinued before they go a step further, and by a careful inquiry to find out what would be the reasonable rate in that case, and include in their order a direction that that rate be put into effect? How would that disturb the business of the country?

Mr. ELLIOTT. I do not know that I can point it out any more clearly than I tried to in my paper. In order to get the necessary evidence and act with any promptness on that sort of a question, you would have to gradually put just as many people into the service of the Federal Government for that sort of investigation as the railroads have in the business themselves.

Senator DOLLIVER. But you pointed out in your paper, and I think correctly, that those complaints are few in number and far between?

Mr. ELLIOTT. As to the actual rate; not as to the rate between communities.

Senator DOLLIVER. I am now talking about the actual rates. It seems to me it would be some sort of relief to the company to have some impartial tribunal to adjust that relation between the public and the road, rather than to have these controversies go on unsettled.

Mr. ELLIOTT. You would not object. You would give the power to the Commission, and they would make the rate 10 instead of 12 cents, and the first thing you would know you would have the same question raised 250 miles away, somewhere. You would have to go over the same performance again.

Senator DOLLIVER. For a number of years they did that exact business, and there was one case—that of the Northern Pacific Railroad, which was the case involving the wheat rate from Walla Walla

to Portland, which was found to be a little too high and the fellow seemed to be a little excited about it. They heard it patiently and determined it, and directed the road to reduce it somewhat.

Mr. ELLIOTT. What did the road do?

Senator DOLLIVER. They did it without any disturbance of business anywhere in that neighborhood, and I believe that you, as the president of the company, if you would read that case, would think it a good job.

Mr. ELLIOTT. Very likely. We have reduced them several times since without any action of the Commission or anybody else.

Senator DOLLIVER. I have no doubt of it.

Senator CULLOM. Do you ever hear, once in a while, when you reduce a rate yourself, of some other road, say, 250 miles away, in some other place, raising trouble, and that road has got to get hold of that?

Mr. ELLIOTT. Yes; that is the great difficulty with the Spokane situation. If you change the Spokane rating, you have got to change the Missoula and the Helena rates, and the Billings rates, and work all the way back to the Missouri rate, and that is why it is so difficult in that particular case to bring that whole question to a conclusion.

Senator FOSTER. Mr. Elliott, you stated, I believe, that the present law was ample to correct all the alleged abuses or evils of the road if it was properly enforced?

Mr. ELLIOTT. Yes, sir.

Senator FOSTER. That implies, of course, that there are violations of the law and some failures to enforce it?

Mr. ELLIOTT. Yes, sir.

Senator FOSTER. To whom do you attribute the failure to enforce the law?

Mr. ELLIOTT. To public sentiment. The law is violated every day by people riding on passes; but nobody wants to enforce the law against people riding on passes, so they do not.

Senator NEWLANDS. Is there any natural law regarding free passes?

Mr. ELLIOTT. Well, the interstate-commerce law prohibits discrimination. It applies to passenger business just as much as to freight.

Senator FOSTER. How would you suggest that the law be remedied, or rather what remedy would you suggest to have the laws enforced?

Mr. ELLIOTT. I suppose the Department of Justice ought to enforce it.

Senator FOSTER. What is that?

Mr. ELLIOTT. I suppose the Department of Justice and the prosecuting attorneys ought to enforce it, like any other law. There would be no difficulty in getting what evidence you want; but as to passenger business, it is being violated every day in the year.

Senator FOSTER. Do you think there is any difficulty in getting any evidence about the violation of the law? Has that been the experience of the law officer?

Mr. ELLIOTT. That is as to the passenger business, I say. As to the freight business, it is a little more difficult, but there is very little of that left. As I say, on the Northern Pacific there are no rebates.

Senator FOSTER. You do not mean to state, Mr. Elliott, that this Commission, in seeking to enforce the law, and the Government, in seeking to prosecute violations of the trust law, have no difficulty in getting evidence for you?

Mr. ELLIOTT. I do not think they would have much. They know about private car discriminations, or I believe they do. I do not know.

Mr. FOSTER. Coming back now to my original question, What amendment of the present law would you suggest to make that law enforceable?

Mr. ELLIOTT. I have not any suggestion to make. I am not a good enough lawyer to know what to suggest. As I recollect the reading of the law, and its amendments, it is very sweeping in declaring it unlawful to adopt any device of any kind.

Senator FOSTER. As I understand it, you admit the violations of the law?

Mr. ELLIOTT. I think very likely there are some. I admit there are a great many in this passenger question.

Senator FOSTER. And none in the freight?

Mr. ELLIOTT. Very little—that is, as to persons. There may be violations of the law as to relations of rates between communities, and that is a more difficult thing, of course, to determine. But the discrimination between persons on freight business is practically eliminated.

Senator FOSTER. Where the discrimination exists against communities?

Mr. ELLIOTT. There is some, but whether unjust or not is a very difficult question to determine. Kansas City, we will say, is shipping goods down to Indian Territory, and Omaha is shipping goods down into that Territory. Omaha has a little higher basis of rates, for example, than Kansas City. The Omaha people will very likely feel that the rates are very unjustly discriminatory in favor of Kansas City; on the contrary, Kansas City people will feel the rates are discriminatory in regard to them.

Senator KEAN. And the Denver people feel that the rates are discriminatory against them?

Mr. ELLIOTT. Yes.

Senator FOSTER. Do you think there should be a proper enforcement of the law to give additional powers to the Interstate Commerce Commission?

Mr. ELLIOTT. I think not.

Senator FOSTER. Do you think it necessary to give any additional powers to anybody or to any tribunal?

Mr. ELLIOTT. I think not.

Senator FOSTER. You would leave it entirely to public sentiment, and it would eventually right itself?

Mr. ELLIOTT. That is my platform.

Senator FOSTER. How would you reach any effective agency or force through public sentiment to enforce the law, Mr. Elliott? How would public sentiment enforce the law without any tribunal to which they would give expression to its wishes?

Mr. ELLIOTT. I do not think I quite understand, Senator.

Senator FOSTER. As I understand you, your idea is to leave all of this matter to public sentiment?

Mr. ELLIOTT. Yes.

Senator FOSTER. Public sentiment would correct it? How would it correct it?

Mr. ELLIOTT. Through the Interstate Commerce Commission.

Senator FOSTER. Then you think the Interstate Commerce Commission has ample authority to correct it?

Mr. ELLIOTT. I think the Interstate Commerce Commission has ample authority to give orders saying that things are wrong. The moment that order is given you set the forces of public opinion at work, and they will act and react on the railroad and on the competing communities. In other words, the preventive power of the Interstate Commerce Commission, as now, seems to me sufficient and better than to give them affirmative powers. To say instead of 10 cents the rate must be 8 cents, that is what I think would be too elastic, not speaking as a railroad man alone, but as a man interested in general business. Let them start by saying 10 cents is wrong, and let people who are engaged in business get together and get a better rate. In the long run I believe the United States would be better under that system than to give to a part of the Federal Government the power of legislation on the subject of rates. It is not that they would not try as hard as anybody, or perhaps harder, to render a wise decision, but they are not in business and it is a business question.

Senator FOSTER. You mean that after the Commission has acted, then public sentiment will practically——

Mr. ELLIOTT. Yes. There is a competition between Louisville and Memphis on some questions. If a tribunal like the Commission renders a decision and says that the rates from Memphis and New Orleans ought to be so many cents lower than from Louisville, then the Memphis people and the Louisville people and the railroads get together, and between them they will adjust them. I think in the long run the general growth of business in the United States will be better after that decision than if the Commission, in rendering their decision, should say not only that the present rates were wrong, but, "You must substitute the following rates," naming them in detail.

Senator NEWLANDS. Under what State is the Northern Pacific incorporated?

Mr. ELLIOTT. The State of Wisconsin.

Senator NEWLANDS. In how many States does it operate?

Mr. ELLIOTT. In Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon.

Senator NEWLANDS. And what is its capital stock?

Mr. ELLIOTT. $155,000,000.

Senator NEWLANDS. And what is the amount of its bonds?

Mr. ELLIOTT. It has $185,000,000 of bonds that are a lien upon the Northern Pacific road, and it is jointly interested with the Great Northern Company in $220,000,000 of bonds secured by deposits of the Chicago, Burlington and Quincy stock.

Senator NEWLANDS. Does it own stock of other corporations?

Mr. ELLIOTT. To a limited extent. It has two proprietary lines, the Washington and Columbia River road, down in the Walla Walla country, which is a small road of 162 miles; and the Northern Pacific Company owns all the stock of that road; and the Minnesota and International Company, up in Senator Clapp's State, is another small road, and the Northern Pacific owns about 70 per cent of that stock. Then we own stock in certain union depot and terminal companies in Duluth and St. Paul and Portland.

Senator KEAN. At Spokane?

Mr. ELLIOTT. No; we have our own depot at Spokane.

Senator NEWLANDS. Do you own stock in the Chicago, Burlington and Quincy?

Mr. ELLIOTT. Yes; we own half of the stock of the Chicago, Burlington and Quincy, and paid for it by issuing this joint obligation.

Senator NEWLANDS. Which is secured by that stock?

Mr. ELLIOTT. Secured by that stock and deposited with the trust company as collateral for the bonds.

Senator NEWLANDS. Do you find much variation in the tax laws of the various States through which your railroad passes?

Mr. ELLIOTT. There is some. Minnesota has a tax on gross earnings of 4 per cent. They have just increased it from 3 to 4, at this last session of the legislature. All the other States have a tax on the value of the property.

Senator NEWLANDS. Do they all assess the property at the same valuation per mile?

Mr. ELLIOTT. They vary a good deal.

Senator NEWLANDS. Is there a very great variation?

Mr. ELLIOTT. Yes.

Senator NEWLANDS, Will you state the lowest and the highest?

Mr. ELLIOTT. I think the lowest valuation is in North Dakota, about $8,000 a mile. The highest, I think, is in Montana, and it will run for the best part of one line in Montana about $15,000 a mile.

Senator NEWLANDS. What system of taxation do you think is the most simple, certain, and fair, the percentage tax upon gross receipts or tax upon valuation?

Mr. ELLIOTT. That is a question that I never came to any conclusion about in my own mind. I do not know; I would not want to go on record as stating I had come to a conclusion as to whether the gross earnings tax or an ad valorem tax was the wisest. It works out in practice with us, whichever system you have, very much the same. That is, it figures out between 3 and 4 per cent of our gross earnings.

Senator NEWLANDS. Would you regard it as an advantage if some uniform method of taxation was adopted in all of the States?

Mr. ELLIOTT. Well, I do not know what particular good it would do. It would not be any disadvantage. But in the long run you would have to collect about the same. There are many difficulties now in trying to adjust it in the different States, but they do not amount to much.

Senator NEWLANDS. You do not have much difficulty regarding the legislation on the practical question of assessment and taxation?

Mr. ELLIOTT. Not a great deal.

Senator NEWLANDS. Do you think there should be any control at all as to the capitalization of railways as against excessive capitalization?

Mr. ELLIOTT. No.

Senator NEWLANDS. You think the railroads should be given a free hand regarding their capitalization?

Mr. ELLIOTT. I think if they are foolish they will fail; if they are honest and decent they will succeed.

Mr. Chairman, I want to thank you for letting me be heard, and I want to thank the Commission for giving me the chance.

Senator CULLOM. I want to thank you, Mr. Elliott, for the paper which you presented.

STATEMENT OF INTERSTATE COMMERCE COMMISSIONER MARTIN A. KNAPP.

Mr. KNAPP. Mr. Chairman and gentlemen of the committee: The doleful picture just painted in your presence by the accomplished artist of the Northern Pacific Railway has acted with such distressing effect upon my imagination that I can scarcely summon courage to address you. Indeed, I have been wondering whether I could not escape a prosecution for treason against my country by pleading guilty to a charge of incompetency.

In the course of your protracted hearings you have listened to some of the ablest lawyers and railroad managers in the United States and to numerous other persons of prominence and authority in various walks of life. There is no phase of this many-sided subject which has not already been brought to your attention, and it would be rank presumption on my part to assume that I can contribute anything of real value to this discussion or otherwise aid your deliberations.

Nevertheless, there are a few things I should like to say if your patience permits, merely for the purpose of indicating my own point of view and suggesting those phases of the subject with which my mind is most impressed. There appears to be a disposition in some quarters to discredit the present law and belittle the result of its operations. It has been described as a crude and ill-considered measure, which has made little advance toward the accomplishment of its intended purpose. I am very far from having any sympathy with that erroneous view. On the contrary, I regard the act to regulate commerce as one of the most important and beneficent statutes ever enacted by the Congress of the United States. When you consider that the enormous power of the Congress under the commerce clause of the Constitution had lain dormant for nearly a hundred years, when you call to mind the amazing rapidity of railway construction during the two speculative decades that followed the civil war, when you take into account the conditions which had grown up with that extraordinary development, and bear in mind that the practices which we now regard with reprobation were looked upon with tolerance and found little condemnation in the average conscience, when you think of the difficulties to be overcome and the obstacles encountered, it seems to me remarkable that a law should have been passed based upon broad principles which are fundamentally correct and eternally right, and which contain such comprehensive and salutary provisions.

Not even the distinguished Senator, so long the chairman of the committee, whose persistent efforts deserve chief credit for that enactment, who has taken the deepest interest in the administration of that law, and for whose personal kindness I can not be too grateful, realizes the immense progress that has been made toward correct methods of railroad operation, realizes the extraordinary change which has taken place in the attitude of railway managers and the public generally toward the whole subject of public regulation. Only when you compare the conditions which were characteristic and universal in 1887, with the conditions which generally prevail to-day, can you understand what great progress has been made in the conduct of these great highways of commerce. And I say that, if the men who were instrumental in procuring the passage of the act

to regulate commerce have their names connected with no other measure, they deserve to rank high on the list of constructive statesmen. And I say this for the reason, gentlemen, that I do not myself favor any radical departure from the theories and plans and purposes of the present law. And I believe that the immediate legislation needed is that which shall be built upon the foundations so wisely laid in this law, and which is directed to correcting its defects, strengthening its weak places, and augmenting its authority.

If there is any possible phase of this subject which has been overlooked, or respecting which there is some confusion in the public mind, it is in confounding things which, as I think, ought to be kept separate and distinct. It seems to be supposed by many that the one thing needful to bring about a railway millennium, although our railway friends say it has already arrived, is to increase the powers of the Interstate Commerce Commission, and the controversy seems to turn very largely upon that particular question. To my mind, that is only one side of the subject which you ought now to consider.

The keynote to what I have in mind in this connection is found in the very clear and illuminating opinion of the Attorney-General. In the Congress of the United States is vested plenary and exclusive powers of legislation upon this subject. You can not delegate that legislative power in any wholesale fashion. You can not turn over some part or section of it to be exercised by the grantee according to his discretion. You must yourselves, and in the statute law, lay down at least certain general rules of conduct. You may legislate as minutely as you choose, you must legislate at least to the extent of imposing requirements, placing prohibitions, fixing restraints and limitations, and if you fail to do all that is needful in that regard, the injustice and wrongdoing growing out of that neglect, if any there be, can not be corrected by simply increasing the powers of the administrative body which you create. Therefore, it seems to me that you may appropriately consider what are the rules of conduct prescribed by the present law which are inadequate, insufficient, and lacking in definiteness.

What further rules ought to be prescribed? What shall be their character? The things you incorporate in the statute are the foundation of all the work that is done or can be done by the body whom you select to carry out the details of your legislation. For example, and I am liable to weary you with an oft-told tale, if a discrimination against a community results from the fact that there is a higher charge for a shorter than for a longer haul, that is a discrimination which can not be corrected under the present law no matter how much authority the Commission may have, because you have not declared that discrimination to be unlawful and prohibited. No one, I think, can read the fourth section of the act to regulate commerce and be in doubt that Congress intended to provide some actual and potential restraint upon that particular form of discrimination. And, I may say, it remains to-day much as it was then, not the greatest evil, but the most irritating and obnoxious form of discrimination that has been encountered.

Senator CULLOM. Discrimination as to localities?

Mr. KNAPP. The long and short haul.

Senator CULLOM. Discrimination as to localities?

Mr. KNAPP. That particular form of discrimination.

Now, I am far from suggesting that you ought now to go so far in recasting the rule of conduct which shall have relation to that particular type of discrimination as to prohibit it altogether, or even to limit the exemptions to such cases as shall be sanctioned by the Commission. I am only suggesting whether you should not somewhat increase the restraint which has been entirely removed from the discrimination effected by much more for the short haul than the long one.

Let me give you the most recent instance which has come before the Commission. The Chesapeake and Ohio Railway crosses the Blue Ridge Mountains just below Charlottesville. Shortly after passing over the mountain it intersects with the Norfolk and Western, and a few miles farther west with the Baltimore and Ohio. The two latter roads run down the Shenandoah Valley, and one of them by the Pennsylvania, and the other by its own rules, carries traffic from that region to a common market, like Philadelphia. The rate on lumber on the Chesapeake and Ohio Railroad for 100 miles to the west and for a hundred miles to the east to Philadelphia is 16 cents. In the Shenandoah Valley it is 14 cents. Therefore the man who is producing some lumber to-day on the eastern slope of the Blue Ridge Mountains, almost within sight of us, must pay 2 cents per hundred pounds more to get lumber to Philadelphia than the man 50 or 75 miles farther west, who gets his lumber transported for 14 cents. Now, 2 cents a hundred pounds is 40 cents a ton. That is $12 a carload of 30,000 pounds, and that is probably about all the margin of profit there is in lumber of that kind.

It has already been stated in your presence that one great railway corporation practically controls all three roads—the Chesapeake and Ohio, the Norfolk and Western, and the Baltimore and Ohio. They compete, according to the statement of their traffic managers, just as vigorously in the Shenandoah Valley as they did when they were entirely independent in ownership and management. And when they are charged with this discrimination they set up that competition as a defense. And I should like to inquire of the lawyers of this committee whether that defense is not complete under the doctrine of the Supreme Court in the Alabama Midland Case?

Now, beyond any question where the competition of the carrier which is subject to the act at the longer distance point is the competition of a carrier which is not subject to the act, as a water carrier or a foreign railroad, there should be freedom to make the lower charge to meet that competition. Where the sole competition is between carriers all of which are subject to this law and to your regulation, it seems to me that a different situation exists and a different rule ought to be applied. But unless you create a different rule in the statute your Commission will be powerless to afford any relief in a case of that kind.

A kindred question arises respecting import rates. I think I appreciate both sides of the argument, and I pay a deserved compliment to my associate on the Commission who wrote the report in January, 1904, when I say that you can not find a more comprehensive, clean-cut, and fair discussion of that question than is contained in that report. Here, again, I am not suggesting that any hard and fast rule should be put into the statute. I am quite prepared to admit that there are conditions under which foreign import traffic

may rightfully be carried to an interior destination at lower rates than the inland carriers may reasonably charge on domestic traffic; but I must confess to a feeling of discomfort, to a suggestion of injustice, when the same service is performed for the foreigner for less than one-third of the charge to our own citizens. Let me pursue that a step further, because it is very closely connected with a point I am now trying to make.

Complaint came before us, directed, I may say, in a general way, against the Vanderbilt system, because they charged 50 cents on plate glass from Boston to Chicago and participate in carrying plate glass from Antwerp to Chicago for 40 cents. And the traffic manager of the New York, New Haven and Hartford Railroad, giving his testimony, used the adjectives, "absurd," "deplorable," and others of equal significance, not undertaking to defend it on any ground of right and justice, but, he said, "They are making a rate from Antwerp to Chicago, by way of New Orleans and the Illinois Central Railroad, of 32 cents; and if I do not make a rate which approximates that the imported traffic will be carried to destination by another route and I shall lose the revenue." Now, when we take up the complaint of the same parties against the Illinois Central, as we presently shall, and say, "How does it happen that you are carrying imported glass from Antwerp through New Orleans to Chicago for 32 cents and to St. Paul and Minneapolis for 38 cents, when you charge 75 cents from New Orleans to Chicago and 40 cents from Chicago to St. Paul," he will say, "I am obliged to do it, because the New York, New Haven and Hartford Railroad makes a through rate from Antwerp to Chicago of 40 cents, which I am obliged to meet."

Senator KEAN. How do they ship that by the New York, New Haven and Hartford Railroad?

Mr. KNAPP. I think by the Poughkeepsie Bridge route. I rather assume that. I think that is their present route for that description of traffic from Boston.

Now, I am only mentioning those instances for the purpose of pointing out to you that unless you put some restraint upon that form of discrimination in the statute, the Commission will be powerless to remedy the injustice. The same thing applies to private cars and to these terminal railroads. It certainly is not natural for the Commission to admit that the law which it is appointed to administer does not give it jurisdiction over offenses which are brought to its attention, but, personally, I have never been able to see in the act to regulate commerce or in the supplemental law anything which enabled the Commission with any effectiveness, if at all, to reach the discriminations which now occur and which have become so acute with regard to private car refrigeration charges and the operations of these terminal railroads.

And again I refer to the subject, not with any disposition to go over it in detail, but to impress it upon you that unless you put some restrictions, some limitations, some requirements, some obligations in the statute when you come to amend it the regulating body, which is your subordinate, will not be able to afford any relief in cases of that kind. Now, let me take a minor one, of which I think very little has been said, but which to me seems of very considerable importance, not only in itself, but because it is connected with another

subject of very much larger significance and about which considerable has been said.

Under the present law any railroad or any two or more railroads operating together under a joint tariff may reduce a rate on three days' notice and advance a rate on ten days' notice, and instances have been brought to my attention in an unofficial way of operations which are as offensive to the moral sense and as injurious in their effect as any check ever given for a rebate. Now, of course, as long as you leave it in the law that those changes can be made upon that short notice any injustice, any operation which is the equivalent of a rebate will be beyond the power of any commission to correct.

Senator DOLLIVER. What, exactly, have you in mind?

Senator KEAN. Midnight tariffs.

Mr. KNAPP. Midnight tariffs. Read the very remarkable address which Mr. Stickney has filed here.

Senator DOLLIVER. I had the pleasure of hearing that when he read it before the Economic Association.

Mr. KNAPP. One of my associates made this observation, that Mr. Stickney is always surprising, whether he makes a speech or files a tariff. Within a fortnight I have had a talk with one of the most successful and prominent traffic officials in the United States, who to-day controls absolutely the entire traffic of one of the largest systems in the United States, and we were talking upon this subject; and in the most emphatic manner he indorsed my proposition. And when I said that notice ought to be thirty days or sixty days, he said it ought not to be less than ninety days.

Senator DOLLIVER. How would that help it?

Mr. KNAPP. You can not make contracts so far ahead, ordinarily.

Senator DOLLIVER. A man might go and get ready for business of that sort in ninety as well as thirty days, I reckon.

Mr. KNAPP. It would be much more difficult and transactions which give offense would be much less liable to occur.

Senator DOLLIVER. But if a rate could not be reduced without ninety days' notice, would not that operate to a very great disadvantage in a thousand other directions?

Mr. KNAPP. I was about to add that I surely would not recommend any hard and fast rule be put in the statute. That is one of the cases where you should leave to your Commission some discretion, at least in cases of emergency, and perhaps not go further than to establish a general rule. Because in some directions your legislation should be general; in other cases, more definite and exact, according as the nature of the circumstances might require.

Let me give another illustration: Some few years ago I was really ambitious to get this law amended on what I conceived to be wise and workable lines, and I was indiscreet enough, perhaps, to attempt to cooperate with some railroad lawyers and experienced traffic officials in preparing suitable amendments to this law; and with some assistance I prepared a draft, which I sent to the late Judge Green, whom some of you knew, at that time the general counsel of the Vanderbilt system, in which I proposed a thirty-day notice, with the right of the Commission to allow any short notice. When the draft came back the only change in it was that he had substituted sixty days for thirty days.

Now, I want to speak of what that particular thing suggests to

me in somewhat larger relations. In the course of these hearings, so far as I have been enabled to keep in touch with them, I observe a great deal has been said about the necessity of flexibility in tariffs, of traffic managers being able to accommodate their rates to fluctuating commercial conditions, and one of the arguments advanced against remodeling this law in any material respect in that the tendency of any actual control through a Government agency of the rates made by the carriers would be toward ironclad rules, and mileage rates, and limitations of that sort. Of course, I am far from admitting that any such consequence would follow either immediately or remotely from a grant of authority far greater than has been proposed by any pending measure. But when I ran over the statements of some prominent traffic officials in which they emphasized the necessity of frequent changes in tariffs, the necessity of adapting their rates to changing commercial conditions, I happened to think of one or two instances which I thought I might bring to your attention.

The most important part of the United States is what is known as "official classification territory"—the section north of the Ohio and Potomac and east of the Mississippi rivers. The class rates which govern most merchandise and articles of manufacture and ordinary household consumption are adjusted upon the basis of the New York-Chicago rate—places nearer New York taking a percentage below the Chicago rate, and places more to the west taking a percentage above. Now, not only has that basis of rates in all that territory remained unchanged since 1887, but so have the rates retained unchanged. And you gentlemen know as well as I do the changes that have occurred and the fluctuations that have happened in commercial conditions in that territory during that period.

Senator DOLLIVER. They seem to have been pretty generally shaken up along about 1900.

Mr. KNAPP. When they made very numerous advances by simply changing the classification of the articles; but they did not change the rates or adjustments between localities.

Senator DOLLIVER. Simply the classification?

Mr. KNAPP. Simply the classification—moved an article up from the sixth class to the fifth, or from the fifth to the fourth—an extremely simple process, and then, of course, it operates under the principle of adjustment throughout the entire territory.

Now, take another illustration, which, to my mind, is more apposite. I take it there is no agricultural product the price of which has shown such wide fluctuations in the last few years as cotton. It is one of the great staple articles of the country; the most valuable, per pound, of anything that grows out of the ground in large volume. More than half of it is exported, and you know the price has gone from scarcely above 5 cents to 16 or 17 cents. And if there is any article which would seem to be susceptible to market fluctuations and the changes in commercial conditions it must be cotton. But an inspection of the tariffs will show you that the rates on cotton have not been changed in ten years.

There has been no material change, I think, in any cotton rate in more than ten years, except that certain reductions have been made in the State of Texas by the commission of that State.

Now, when I observe instances of that kind, when the ablest and

most experienced traffic officials tell me that there is no sort of reason for 500 to 1,000 changes in interstate tariffs every twenty-four hours, as our files show there are, you must not be surprised if I fail to accept at par value all that is said here about the necessity of adapting rates to commercial conditions. Undoubtedly, when you take a considerable period of time great influences do operate to an extent which may justly require material modifications in freight charges, but to my mind it is quite unsuitable that the little surface fluctuations in trade should find expression in extended changes in the daily tariffs. I believe that those surface currents should adjust themselves to the tariffs and not the tariffs to the currents. And I am saying this, gentlemen, not as a result so much from my own observation or from any a priori view of the case as because of the statements made and arguments submitted to me by practical railroad men of the highest distinction.

And that suggests another view to my mind which I think may properly be taken into account even by our railroad friends. As I said, I am very far from believing that there should be anything more than the most inconsiderable tendency, if any at all, toward the adjustment of rates on a mileage basis, and I think the prosperity of the railroads, the development of the different sections of the country and their industries, justify, the making of rates upon what might be called a commercial basis rather than any distance basis; but do you realize what an enormous power that is putting into the hands of the railroads? That is the power of tearing down and building up. That is the power which might very largely control the distribution of industries. And I want to say in that connection that, I think on the whole it is remarkable that that power has been so slightly abused. But it is there. My esteemed friend, Mr. Elliott, has just told you that the rates on wool from Montana must be adjusted with reference to the rates on wool from Kentucky. Well, grant it. But suppose he should see fit to adjust his rates on wool so that they moved to the Pacific coast and it became for the interest of his railroad to change that adjustment. Is that to be left entirely to his judgment? Or it comes back to the question which Senator Dolliver asked of him, in substance. After all, are the railroads to be left virtually free to make such rates as they conceive to be in their interests? Undoubtedly their interest in large measure and for the most part is the interest of the communities they serve. Undoubtedly in large measure and for the most part they try as honestly and as conscientiously as men can to make fair adjustments of their charges. But suppose they do not. Is there not to be any redress for those who suffer? That is really the question.

And since I have said so much on that subject, if you will pardon me, I will venture to pursue it for a moment in another direction, although it leads us into the domain of economics. Suppose it were true that a more potent exercise of Government authority and the adjustment of rates tended somewhat to increase the recognition of distance, with the result of producing a greater diffusion of industry rather than its concentration. I am not a political economist, nor competent to speak on a subject of such large dimensions, but I can not believe that all those institutions, laws, administrations which operate to the concentration of industries and population are altogether to be commended. They may result in greater aggregate

wealth for the country. I am prepared to admit that they do; but do they result in happier homes, better lives, greater social comfort? I have some doubt of it.

To state one other instance of what I am trying to say—of the things that you must put in the law if the thing is to be regulated—and that is this question of compelling carriers having physical connection to unite in making through routes and through rates. You have already been told, I dare say, that it is not probable that another trunk line will be constructed at any early date, and that such railway development as takes place—say, east of Chicago—must mostly be in branches and laterals, in extensions of existing systems. Well, suppose some enterprising gentlemen build a railroad in West Virginia which at one end touches the Baltimore and Ohio or the Pennsylvania. What are they going to do with it when they get it there? If they can not invoke public authority to make some equitable arrangement with reference to joint rates and the interchange of traffic, they may be very much disappointed in the outcome of their enterprise. That only suggests again that, if anything of that kind happens, if there is danger of injustice of that sort, the safeguard must be found, not in anything that the Commission can do primarily, but in some restriction or requirement in the law you pass.

Senator DOLLIVER. In such a case would you have the law define the portion of the rate to go to those roads, the portion which they would be entitled to?

Mr. KNAPP. Oh, no.

Senator DOLLIVER. The ratio?

Mr. KNAPP. Probably you could go no further there with usefulness than in a general way to put the obligation upon the carriers, with the power in your regulating body, if they did not agree, to make the division and to prescribe rules of interchange.

So, without pursuing that branch of the subject further, I venture again to say that the primary thing is to see what restrictions, what obligations, what prohibitions, what restraints, what limitations are to be placed upon the interstate railways, and those must all be in the statute; or else they will not be the subject of regulation.

Senator DOLLIVER. The thing we want to find out is just what we want to put in the statute.

Mr. KNAPP. And you see all that precedes the question of your Commission and what it can do. And when I use the term Commission I do so for convenience, not necessarily referring to the present Commission, but as describing whatever subordinate body you create and must create for the purpose of ascertaining whether the rules you lay down are conformed to, and if not to exercise such authority as you may give it to bring about that conformity, and all that which I have tried to suggest precedes the question of the subordinate tribunal.

Now the second question is, What sort of a tribunal is that going to be? We are told at this late day that no administrative or legislative tribunal is necessary; that whatever principles of regulation you adopt and promulgate may all be applied and enforced in the Federal courts. I suppose I must be lacking in quick perception and ready receptiveness, but I have not yet been able to see how that scheme could be made to work. To my notion regulation is legislative. It must begin in the nature of the case with the tariff—that is to say, it

must begin with requiring the announcement by the carrier of what he is going to charge. And then two questions at once arise. One is, Who will see to it that the rate that it says it is going to charge is actually charged to everybody alike? And the other question is, If that rate is wrong, how is it going to be corrected? And the two are very unlike propositions.

A tariff is a law. It is a rule of action of general application. So long as it is in force it has all the characteristics and all the binding obligations of a statute. To depart from it is a misdemeanor, and it does not make any difference whether that tariff law is passed by the railroads, made by a commission, or enacted by Congress. In either case, if that law is wrong the only thing to do is to change the law. If that law is broken, then the thing to do is to punish the man who broke it. The courts are constituted to apply and enforce law and to punish those who violate law. The legislature is ordained to make laws and change laws, and in the very nature of the case the proposal to use the methods of a court to deal with a purely legislative question is incongruous and unsuitable.

Senator DOLLIVER. It is rather an extreme thing, it seems to me, to say that a railroad tariff is in the nature of a law.

Mr. KNAPP. Precisely that. What else is it to-day?

Senator DOLLIVER. We had that law well broadened by various interpretations——

Mr. KNAPP. Of course it is not statute law.

Senator DOLLIVER. Is it a law of the United States in any sense of the word?

Mr. KNAPP. Not in the sense of being a legislative enactment; not in the sense that it is a principle which has been developed by the adjudications of courts; but in the sense that it is a rule of conduct of general application binding upon everybody.

Senator DOLLIVER. But prescribed not by the power of the State, but by some private business enterprise?

Mr. KNAPP. Prescribed by the railroads; but I am only suggesting, Senator, that in its relation to the public, and with reference to the question of whether that law is right or wrong it might as well have been made by the Commission or enacted by the Congress; and if you, as you might, should say by statute that the rate on grain from Chicago to Baltimore shall be 13½ cents, and from Chicago to Philadelphia 14 cents, and from Chicago to New York 15 cents—and somebody said that is a discrimination against New York—would it not be rather absurd to say that you must go to court and have it enjoined? It is a law that you have passed.

Senator DOLLIVER. I do not see how a thing is a law that a man may go into court and assert is illegal—contrary to law—and recover damages for an excessive charge. If I understand the decision of the Supreme Court a man can take one of those tariff rates and go into court and state that it is unreasonable and illegal and get the court busy to finding damages.

Senator CULLOM. Of course you could not do that if it had been enacted by the power that makes the statute.

Mr. KNAPP. I am aware that is said, and, of course, I am not using the term "law" in the sense of statute; I am only suggesting that it is a legislative act, and it does not matter who legislates it into

existence, whether it is the carrier or a commission or the courts; if it is wrong it ought to be changed and amended.

Senator CULLOM. It is misleading, is it not, to call it a law?

Mr. KNAPP. Oh, I suppose it is; I only used that to illustrate, for want of a better term, the difference between those obligations which exist between the carrier and the public and which are of general application and the rights of individuals which come in controversy in court.

Senator DOLLIVER. I raised the question not for mere controversial purposes, but because it has been repeatedly suggested here that the publication of this railroad schedule here, which has been required by statute, gives it a certain sanctity that protects if from individual complaints as to its injustice or illegality, and it seems to me that it adds nothing to it.

Mr. KNAPP. Well, we do not know yet about that. I know we are all accustomed to speak about the right of any person who has paid what he regards as an excessive charge to a carrier to bring his action in damages. Theoretically, of course, that right exists. Have you ever known it to be exercised? We are accustomed to speak of that as though there were cases of frequent occurrence.

Senator DOLLIVER. I know they are not frequent, but they have been sufficiently frequent for the courts to lay down the general principles which govern the rights of the parties of the cases.

Mr. KNAPP. Undoubtedly; and in such a case as that the court necessarily must determine what would be a reasonable rate for the purpose of fixing the measure of damages.

Senator DOLLIVER. If you will permit me to call your attention to the case of Regan *v.* the Farmers' Loan and Trust Company (154 U. S., p. 362), there the court say:

> It has always been recognized that if the carrier attempted to charge a shipper an unreasonable sum the courts had jurisdiction to inquire into that matter and award to the shipper any amount exacted from him in excess of a reasonable rate; and, also, in a reverse case, to render judgment in favor of the carrier for the amount found to be a reasonable rate.

Mr. KNAPP. There is no question about the doctrine. My question was, Have you known of any such suit being brought against the railroad?

Senator DOLLIVER. I think that must have been some such suit.

Mr. KNAPP. I suppose there are much better and more diligent lawyers than I am, but I have never found a reported case and would be very much obliged if any of my friends will call my attention to one where there has been such a suit brought against the railroad company.

Senator DOLLIVER. Section 15 of the interstate-commerce act seems to have contemplated such a double proceeding to correct the unreasonable rate and to collect damages in all these cases where complaints are made of the rates. I do not know whether any of those cases have gone to the courts or not.

Mr. KNAPP. And it perhaps must remain an open question until it is decided whether an action will lie to recover an alleged excessive charge where that charge is in accordance with the tariff filed as required by law. I do not know what the law is until that question shall have been decided.

Without pursuing that subject too far—because the question has become familiar to you and you have to decide it—I only make this suggestion. At best, and at the most, the remedy which can be administered by the courts is uncertain, limited, indirect. If you were to adopt that plan, you must be prepared to enter upon some years of litigation to find out just how much a court can do, how much it will do, and how it will do it. And I have rather wondered whether all this insistence that all these questions should go to the courts instead of to a commission because a commission is incompetent is not a little insincere.

Now, is it really because it is believed that the men who would be upon a commission are incapable of determining these questions? Including the five first appointed, fourteen men have been appointed on the Interstate Commerce Commission. Excluding myself and one other who never studied law or was admitted to the bar, I undertake to say that every one of the other twelve was qualified by ability, legal attainments, professional standing, and in other respects for appointment on the Federal bench. I believe those twelve men, from the great jurist, Judge Cooley, to the distinguished statesman, Senator Cockrell, will compare very favorably with the average of the men who have been appointed to the district and circuit court benches of the United States in the last fifteen years; and I find myself wondering how it is that the same men who as judges, with the multifarious duties of that office, would be so competent and so highly qualified to pass upon these traffic problems, are unfit and incompetent when they are commissioners and not judges. Candidly, is not this the reason, that our friends know perfectly well that a legislative tribunal can control rates, if it has the authority, and they know that courts can not control rates effectively, no matter how much authority you may attempt to give them? Is not that the real reason why a court is preferred to a commission?

There is an old Italian proverb to this effect, "If you want a thing done do it yourself; if you don't want it done get somebody else." So I venture to say that if you really want to regulate railroads, regulate them yourselves by legislation and by a legislative tribunal. If you do not want to regulate them, get the courts to do it.

I want to get through in a few minutes. What is the use of my going over the ground that has been traversed so many times by men much more competent to discuss these questions than I am? You first settle what the law shall require, prescribe, enjoin, and you then decide what tribunal shall be selected to give force and effect to those requirements. That tribunal must be legislative, in my judgment, to accomplish the purpose of settling the questions that arise.

One of the questions is, How much authority are you going to give that tribunal? I do not care to discuss that. It has been thrashed over here for six weeks, and I could not add a thing to the discussion one way or the other. If you think there is any way to accomplish the thing that ought to be done, short of giving your administrative tribunal the power to substitute a reasonable rate for an unreasonable one, I shall be very glad to have you find the way.

Then the other question. What is to be the effect of any order made by the tribunal which you create? One of the embarrassments which I have felt from the beginning has been that under the existing law when the Commission has heard one of these complicated ques-

tions relating to what is a reasonable rate or a properly adjusted rate and has reached a conclusion and made its report and given direction to the carrier accordingly, if its view of that situation is not accepted, then the Commission must become a suitor in the courts to enforce its own determination.

Now, speaking for myself, and I think upon that point I am in harmony with the views of all my associates, I do hope at least this will be done. Whatever authority is given, let the exercise of that authority be final; let it take effect by its own force within such reasonable time as you may prescribe or under any conditions that you may prescribe, but when a commission has made such a ruling as it is authorized by you to make, whether that ruling is to be limited to the present or extend into the future, then the Commission's work should be finished. And the carrier should be put in this position: That it must either accept that ruling and act accordingly, whether that be merely a ruling of condemnation or a ruling of requirement for the future, or must itself go to court and get rid of the ruling. Now, that does not involve any radical change from the present law, because it is now provided that the findings of the Commission are prima facie correct. So that to-day if a suit is brought to enforce a disregarded order of the Commission you can simply go into court and present your case, and there is your prima facie case, and the burden of proof is on the carrier. In other words, you are not making so radical a change as to trasfer the burden of proof by adopting the plan I suggest, and you do relieve the Commission of what to me has seemed an embarrassing attitude, one that at least furnished some excuse for the criticism that its functions are inconsistent.

Senator KEAN. Let me ask you a question just there. If the fixing of a future rate is a legislative act, then the court probably could not review it?

Mr. KNAPP. Senator Kean, I may not say anything here unless I speak the absolute truth as I see it, and your observation suggests a very serious question. All the answer I can make is that I do not know. I have believed that if a law conferred upon a commission the authority in such a case as this—one of these contested cases—to substitute a reasonable rate, that the carrier could go to court on the theory that the Commission had exceeded its authority by prescribing an unreasonable rate. Now, how far you can give jurisdiction to courts or to what extent they will take it I think no lawyer can predict with any confidence until the question has been decided.

Senator KEAN. Then, in any act we drew, if we gave the Commission power to fix the rate, if the court had any jurisdiction it would have to be decided, would it?

Mr. KNAPP. That is the way the matter rests in my mind. I have been very strongly inclined to the opinion, already expressed in your hearing, that there is no such difference as has been assumed between a rate merely unreasonably low and a rate that is confiscatory. I should think it not unlikely that the Supreme Court will some day hold, when the question is presented, that a rate imposed upon a carrier by public authority which is unreasonably low, which is less than in justice and fair dealing that carrier is entitled to receive is pro tanto, a confiscation of that carrier's property. Of course, if that view prevails and that is held to be the law, then the carriers have every remedy under the Constitution which can be conferred upon

them by statute. But suppose you accept the proposition that there is a margin—possibly a wide margin—between a rate that is unreasonably low and a rate that infringes upon the constitutional rights of the carriers. Is that a sufficient reason for not granting the authority? Of course, the Commission is likely to make mistakes. The only gentlemen who have appeared before you and freely claimed that they never made a mistake are these railroad managers.

Senator KEAN. I do not think that is so.

Mr. KNAPP. I do not say that with the utmost seriousness, of course, but in point of fact I do not remember, in running over the records of your hearings, that any railroad manager has ever intimated that he has ever made an erroneous rate, or in any respect unjustly treated his patrons. Now, I can not claim that for myself, as a member of the Commission. I have made mistakes.

Senator CLAPP. Judge, the record which we have here shows that since 1897, the time of the Maximum Rate case, when it was definitely decided that the Commission could give no such legal effect to the recommendation of the substituted rate as they could give to the condemnation of the existing rate, that since that time, of the cases where the Commission has condemned a rate and recommended another rate, and the condemnation has stood, either without a contest or after taking it into court, with two exceptions the carrier has accepted as a substituted rate the rate recommended by the Commission.

Mr. KNAPP. I think that is true.

Senator CLAPP. Well, with the power of the Commission to challenge anew the substituted rate, practically the carrier would have to, as a rule, accept the recommendation, would it not?

Mr. KNAPP. Senator Clapp, I will answer that question in this way: I anticipate that when a decision of the Commission is taken to court, under any scheme that you are considering, the vital question will be, was the Commission right in its condemnation of the rate complained of?

Senator CLAPP. Yes.

Mr. KNAPP. If it was, the rest follows.

Senator CLAPP. Yes. And when that is established, either by acceptance without a contest in the court or by the court, that settles the vital question that was at issue, does it not?

Mr. KNAPP. Substantially; yes, sir.

Senator CLAPP. Yes. And practically, as a rule, the carrier would necessarily and naturally adopt the rate recommended in substitution?

Mr. KNAPP. That would not follow.

Senator CLAPP. What?

Mr. KNAPP. That would not follow.

Senator CLAPP. Well, I do not say in all instances.

Mr. KNAPP. No.

Senator CLAPP. But with the power left back in the Commission to again challenge the substituted rate, which of course it would have, would it not, as a practical result—practically follow, to use that expression—that the carrier would adopt the rate recommended by the Commission?

Mr. KNAPP. Oh, I should put that this way——

Senator CLAPP. Well, you state it, then.

Mr. KNAPP. The carrier can not afford to trifle with public authority. It can not afford to do a trivial and evasive thing. I must

honestly say that I do not believe any railroad manager would make, under such a theory as that, a nominal change in a rate for the purpose of technically complying with an order to cease and desist. If that was done twice in this country the next session of Congress would fix it.

Senator CLAPP. Yes.

Mr. KNAPP. If you will pardon me for making a further answer.

Senator CLAPP. Yes; certainly; go on.

Mr. KNAPP. Now, as a practical matter, after all there is not so much difference between the plans, because I have long been of the opinion that not only should the initiative in rate making remain with the carriers, but that any order which the Commission makes requiring a rate to be changed for the future should be limited in time as to its effect to a not very long period.

Senator CLAPP. Yes.

Mr. KNAPP. So that, let us say after a year, if you please, the initiative as to that rate should attach. And it seems to me that is a complete answer to this suggestion that a commission that can change one rate can change all rates, and it is only a question when they are all made by the Government.

Senator CLAPP. Now, as between the order condemning a rate and an order substituting another rate, in so far as it involves, by the court upon review, the suggestion of a legislative duty, as suggested by the Senator from New Jersey, the question would be absolutely free, would it not, from all embarrassment of that sort, if it was limited to the order condemning a rate as unreasonable? Do I make that plain?

Mr. KNAPP. If I comprehend your question, as I think I do, it is quite obvious to me that such a plan, of course, avoids certain questions which have been very much controverted during this hearing.

Senator CLAPP. I did not mean to interrupt you.

Senator CULLOM. You mean simply the declaring of the rate unreasonable?

Senator CLAPP. No; what I mean is as to a review by the court, declaring a rate unreasonable. That would be free from any of these questions.

Mr. KNAPP. Oh, I think so.

Senator CLAPP. Yes.

Mr. KNAPP. And I, for one, can see that that right should be granted. That is to say, the carrier which is unwilling to accept the adjudication and order of the Commission, and wishes to review that, should have the right to review the condemnation of the rate complained of as well as the rate put in substitution. It seems to me that is within the range of justice. So I say, gentlemen, it would be a waste of time for me to discuss the remaining question. I will say again, as I have said, I am not able to see how you can apply the remedy which a given situation may seem to require unless you have an administrative or legislative tribunal which can, acting under your authority, substitute a rate to be charged in the future in place of the rate which has been found unlawful. If you can find a way to accomplish the purpose and meet the needs in that regard in some other way, I can only say that I, as a member of the Commission, shall

be glad to be relieved of the responsibility, which is a very great one, of saying in such a case as that how much the railroad shall charge in the future.

Senator CULLOM. There is only one of two ways. One is by the Commission and the other is by the court, if you can show that the court has the power.

Senator KEAN. If a court finds a rate unreasonably high and decrees that that rate shall be discontinued, do you not think that that decree would result in substantial relief?

Mr. KNAPP. Senator Kean, we do not know. In the first place, we do not know whether the court would do that or not. There is no authority to indicate that at all. The weight of authority is very much to the proposition that it will not.

Senator CLAPP. Pardon me, but I do not think that you quite caught the Senator's inquiry.

Senator KEAN. If the court finds a rate unreasonably high and decrees that that rate shall be discontinued, do you not think that that decree would result in substantial relief?

Mr. KNAPP. Yes; if it did. But this is my proposition. Unquestionably there are certain situations in which a court may render a judgment which affects a rate, and may indirectly, under some circumstances and to some extent, practically affect that rate for the future. But is there any case in which that has not happened as an incident to some other purpose, and is there any authority for the proposition that a court will maintain an action, the object and purpose of which is to reduce a freight rate, while plainly the object and purpose of the action is to require a lower rate to be charged for the future? Does not every authority deny that a court can do anything of that sort?

Senator CLAPP. Did you not, Judge, have in mind, in connection with the Senator's question, the idea that in that proceeding not only was a present rate being condemned, but another rate was sought to be substituted—a definite rate?

Mr. KNAPP. I understood the Senator's question to be this: If a court should entertain an action, the object and purpose of which is to have it declared that a rate in force is unreasonably high, and to have an injunction restraining the carrier from continuing that rate——

Senator KEAN. Yes.

Mr. KNAPP (continuing). Whether that would not operate to affect the rate for the future? Of course it would, if the court did it. If the court entertained the action, and did enjoin the further imposition of the rate, why, of course, that would have the effect of bringing about some change in that rate for the future. But you are assuming two propositions, neither of which finds any judicial support up to this time.

Now, if I may add one word about the Elkins bill. A more effective and complete measure for its purpose has not come within my observation. It is invaluable. Now, gentlemen, just think of it; just see what the defect was in the original law. Judge Grosscup held very early after it went into operation that you could not convict a carrier for paying a rebate unless you proved that, for like and contemporaneous service, it charged somebody else more. That is, you had to prove an actual discrimination. As a practical matter,

you never could do it. For eight years, gentlemen, we were here asking this Congress to just make enough change in that section so that the tariff rate should be the legal rate, and any departure from it an offense. And when we got that in the Elkins bill the thing stopped over night. That is to say, when your law is effective, when anybody that is violating it knows that he can be reached and punished, why, he is going to stop. You do not appreciate sometimes, I think, the deterrent force of law. That is a great thing to be said about this act to regulate commerce. Suppose it is inadequate. Granted that the Commission has not been capable of administering so great a trust. Can you overestimate what the effect has been on the railway operations and practices of this country, that there was such a law, and that there was a Commission with the fullest powers of investigation and exposure?

Well, gentlemen, I have talked long enough to prove the charge that I am unfit for my place, and I will now answer any questions that you want to ask.

Senator CLAPP. I would like to ask you about one point, and that is this long and short haul. I understand that you favored in some form an exception to the prohibition contained in the fourth section.

Mr. KNAPP. Let me add another reason. In the present state of the law there is no restraint upon the spread of that form of discrimination into the territory where it now seldom happens. But I see some indications that the discriminations of that kind are reappearing in that territory, and I think Senator Dolliver will find that not very long ago, when a sort of a rate war broke out between the lines leading to the Atlantic and the lines leading to the Gulf, that corn and perhaps some other products were carried from Omaha to tidewater for considerably less than the rates from Iowa. So there was a violation of the long and short haul clause up in that territory.

Senator DOLLIVER. Yes; we took a good deal of corn down to Omaha to start it.

Mr. KNAPP. Yes. I will make this suggestion, that it may turn out that if we can put some sort of restraint on that form of discrimination, at least enough to prevent its spread, that would operate to prevent some of these rate wars, and to prevent the demoralization that always happens. In this case they would not have been making a 13-cent rate from Omaha to Baltimore if they had had to apply that as the maximum rate in all this territory.

Senator CLAPP. What I wanted to know is whether there should be some exemption to the prohibition?

Mr. KNAPP. Undoubtedly.

Senator CLAPP. Now, undoubtedly the law provides at present that the exemption is to a dissimilar condition. The court, in the Midland Case, emphasized two or three times that competition was not the only consideration.

Mr. KNAPP. Yes, sir.

Senator CLAPP. Now, what kind of a limitation would you suggest to this exemption; or, in other words, to put it more grammatically, probably, how would you frame this exemption? Do I make that clear?

Mr. KNAPP. Yes. This is one way; that the competition of carriers

not subject to the act may justify the higher charge for the shorter haul?

Senator CLAPP. Yes.

Mr. KNAPP. But other forms of competition shall not. But, of course, retaining and perhaps amplifying the proviso clause now in the section, so that even in cases of competition between carriers subject to the act the Commission would have power.

Senator CLAPP. Then, you would limit the legal exemption, and leave the broader exemption to the Commission?

Mr. KNAPP. Yes, sir.

Senator CLAPP. I wanted to get your idea in reference to it; that is all.

Senator KEAN. Do we understand that the other commissioners will be heard on Monday?

Senator CULLOM. It is understood that the commissioners, those who have not been heard, may be heard on Monday morning, at 11 o'clock, if they so desire.

STATEMENT OF MR. RUSSEL G. STEVENS, OF SACRAMENTO, CAL.

Senator CULLOM. What is your business?

Mr. STEVENS. Horticulturist.

Senator CULLOM. If you have anything to say pertinent to this question, go right on.

Mr. STEVENS. Mr. Chairman and gentlemen of the committee, I would say that I am here as a representative of at least 95 per cent of the fruit growers of the State of California.

Senator CULLOM. Ninety-five per cent?

Mr. STEVENS. Yes, sir.

Senator CULLOM. The reason that I made that inquiry was that we had 80 of them in here yesterday.

Mr. STEVENS. Who were they?

Senator CULLOM. Some gentlemen from California who were being heard. Of course, that was their statement. I do not know anything about the truth of it.

Mr. STEVENS. As I desire to be as brief as possible, I will state in the way of preface that the other side of the question as represented by Mr. Robbins has been given three or four days. I had proposed to speak upon the Armour car lines. I wish to say that by action of the fruit growers of the State of California in convention resolutions were adopted at the last State convention, which was held in the early part of December last, regarding interstate commerce. I will read you from the first annual report of the commissioner of horticulture of the State of California, for the year 1904–05. This is a part of the report of the committee on transportation, and I will read you what is pertinent to this:

We favor—

1. The application of the provisions of the interstate-commerce act to "all transportation of interstate commerce over any or all lines of railroad," and their connections.

2. The establishment of a court of interstate commerce clothed with powers to enforce summarily the orders of the Interstate Commerce Commission, and the laws forbidding carriers or shippers to give or receive rebates, concessions, or discriminations. Such court is to concern itself solely with interstate-commerce cases and shall have power to enforce its orders by writ of injunction,

attachment, or other process. It may act upon the application of the Interstate Commerce Commission, or any aggrieved person, and may punish violation of its orders as contempt of court by a fine of not more than $5,000 or imprisonment for not more than one year.

3. That when the Interstate Commerce Commission decides that a rate is unjust "it shall be the duty of the Commission and it is hereby authorized and empowered to fix a rate in lieu of the rate that has been found unreasonable and unjust."

4. That "every order issued by the Interstate Commerce Commission shall become effective and be obeyed by the carrier or carriers on and after the dates specified for compliance in such order." That if the carrier appeals to the interstate-commerce court from such order it shall be enforced pending the hearing of the appeal, unless, in the opinion of the court, the order is clearly unjust, when it may be suspended. Also, that when an appeal is made from the interstate-commerce court to the Supreme Court of the United States (which may be made upon constitutional grounds alone), "during the pendency of any appeal, neither the order of said court nor the execution of any writ or process shall be stayed or suspended."

And that this proposed legislation covers private as well as all other car lines.

That was adopted unanimously. There was no division upon that part of the report. There was a part of the report, however, that was objected to, and that was that the Southern Pacific should be called upon to annul immediately its contract with the Armour Company, and some of the railroad officials—the manager of the Southern Pacific for the southern coast, and Mr. Shoup, another officer of the Southern Pacific—appealed to the convention not to pass such a resolution, for the reason that it would be utterly impossible for the road to comply with the request in the limited time given. In other words, that it did not have time to procure the necessary equipment in the way of refrigerator cars.

Now, gentlemen, I can throw new light, I believe, upon this question, and I will deal with it as briefly as possible.

In order that you may have a more complete and definite understanding as to the conditions under which California fresh deciduous fruit shipments are made and marketed, I will explain the terms and conditions, as I understand them, under which the shippers who constitute the combination of shippers known as the "California Fruit Distributors" was organized in 1902.

To become a member the applicant had to stipulate and agree that he, the company or corporation, as the case might be, would not do any greater portion of the business for which they were organized than the relative per cent of the whole of such business that he, the company or corporation, did during the season of 1901. In other words, no member had a right, under the terms of the compact, to build up and increase its business, and that in the event of any member, through any cause, increasing its business beyond the limit thus placed upon it, it can then be made to forfeit all profits made by such increase of business to the other members of the combination, to be divided between them in proportion to the per cent of business which they are entitled to under the terms of this compact, made and entered into at the time they became members of the "distributors."

Senator CLAPP. What compact was he referring to there?

Mr. STEVENS. The "distributors." I want to show the connection between the organization known as the "shippers" and the Armour Car Line.

Senator KEAN. Those are the fruit shippers of California?

Mr. STEVENS. Yes, sir.
Senator KEAN. And you are a grower?
Mr. STEVENS. Yes, sir; I am a grower.
Senator KEAN. Do you market your own products?
Mr. STEVENS. Yes, sir.
Senator KEAN. Then this does not affect you?
Mr. STEVENS. Yes; very materially.
Senator KEAN. If you market your own material?
Mr. STEVENS. Yes; it does, very materially.
Senator KEAN. Do you get the same rate?
Mr. STEVENS. Yes, sir. If you will permit me, by the time I get through I guess I can show you that it does affect me very materially.

The rules governing and the obligations imposed upon the members of the "distributors" when taken in connection with the fact that the Armour Company, through the contract made by it with the Southern Pacific Company, has a monopoly of carrying all fresh-fruit shipments over the lines under the control of the Southern Pacific Company, are such as to give them complete control of 90 per cent of the eastern markets in which California fruit is sold. Then it can be easily seen that the Armour company, by virtue of this contract, giving to it this momopoly, is afforded an opportunity of discrimination and favoritism sufficient to drive out of the marketing business at any time that, in the judgment of the company, good business policy would permit, all those whom it may regard as being inimical to its own interests.

The fact of the very friendly relations that evidently exist between the Armour company and the management of the Earl Fruit Company (see p. 343, Report of State Board of Horticulture, 1901–2) and some of the other members of the "distributors" may go far to explain why a limit was put upon the volume of business that might be done by members of the combination of shippers known as the "California Fruit Distributors," and so long as the small shippers who belong to the "distributors," those who did from 2 to 5 per cent of the business in 1901, are permitted to continue to do their proportion, they will not be likely to complain, particularly when they take into cosideration the fact that the enforcement of the limit rule rests wholly with the dominating influences in the "distributors," which influence is looked upon from the standpoint that "the king can do no wrong."

The Earl Fruit Company, Porter Brothers Company, and the Producers' Fruit Company did about 70 to 80 per cent of the shipping and commission business at the time the "distributors" were organized, and were on the most friendly and intimate terms with the Armour Company, as is shown in some instances at an investigation made before your honorable Commission at Chicago some time ago.

I am informed that the directors of the distributors meet once a week during the busy shipping season to fix the f. o. b. price that they will pay the growers for their fruit, and also the price for which the same fruit is to be sold by them in the East. If this be true, it is evident that the dominating influence in the "distributors," let it rest wherever it may, possesses arbitrary power to fix any margin of profit on all such transactions as it may see proper. The growers have the option of accepting the price fixed by the shippers or shipping and

selling through them on commission, which frequently results in a loss to the growers.

The evil of this method of doing business lies in the fact that the Earl Fruit Company and other members of the "distributors" are doing both a commission and f. o. b. business.

They buy fruit f. o. b. California (for which they charge the growers a 10 per cent commission, which charge reduces the net price paid the growers from 3 to 5 cents a package) and sell the fruit so bought in competition with consignments solicited and accepted from growers, to be sold by them on commission.

The growers have no voice in saying where and to whom such consignments shall go.

The handling and disposition of such fruit is wholly under the control of the shippers.

What are the natural and logical deductions to be made from such a condition when we take into consideration the fact that the California Fruit Distributors claim to possess the power to distribute shipments in such a way as to prevent gluts? If this claim be true, then it is an admission on the part of the "distributors" that they can create gluts at will, for in this case the power to prevent gluts is the power to create them.

Under such a system of transportation and marketing is it not in the power of the f. o. b. buyers, who belong to the "distributors," to set aside any number of the 130 or 140 markets that receive and consume carload lots of California fruit for their own private use and protect such markets by not permitting any consigned fruit from growers to be sold in them?

The Armour Company, by virtue of this contract with the Southern Pacific Company, at any time its interest demands can absolutely control a large proportion of the markets in which California fruit is sold, through its icing charge. This charge is a lever with which competitors can be either driven out of the business or controlled in a manner that will not in any material way interfere with its business.

This icing charge in exorbitant, averaging about $106 per car, and believed by many to be all profit, for the reason that the company can, as it does in some instances, put up its own ice or own a controlling interest in companies that may be permitted to furnish it with ice, consequently the profits accruing to such companies ultimately find their way into the treasury of the Armour Company.

It is estimated that the actual cost of icing is more than covered by the revenue secured from the railroads over which the Armour Company routes its cars for the use of them, for it is not improbable that railroads over which the Armour cars could be routed would be glad of an opportunity to supply ice free, if for nothing more than to receive the tonnage they might by so doing gain.

If the Armour Company is in any way connected with any company that is doing a jobbing and retail business in disposing of California fruit, then with its icing charge all profit or the portion of the charge that is such, the company will be enabled to successfully compete with all others in the business to a degree that will either drive them out of the business or make them submissive to its will.

The power with which the Armour Company is vested affords it

an opportunity to make profits of far greater magnitude than anyone could believe possible until he had made a critical and thorough investigation of the question.

The Armour Company, with the power conferred upon it by virtue of its contract with the Southern Pacific Company, can gain by adopting and pursuing a diplomatic policy, for which it and like corporations are renowned, the consent of the shippers who are members of the distributors to do almost anything it may desire in regard to the manner in which the shipments of fruit are to be distributed. It is hardly possible that any of the shippers who belong to the distributors would offer any serious objection to a request coming from the Armour Company, in the event it should ask to have a number of markets, other than auction markets, set aside for the benefit of private fruit companies in which to market the fruit they buy f. o. b. from growers at a nominal price, with the understanding, by intuition if not otherwise, that no more fruit would be permitted to be shipped to such markets than can be made to realize a satisfactory profit to the f. o. b. buyers; and it is just possible that it might be further understood that if the volume of fruit going forward was too great for the demand, then in order to protect the f. o. b. buyers the consigned fruit from growers would be sent to the auction markets, which would give them an oversupply, with the result that prices in these markets would be demoralized and drop below a paying basis for the growers, which result would give the f. o. b. buyers an opportunity to buy fruit in California from the growers at any price they would see proper to offer and put it in protected markets and sell it at prices that will bring to them large profits, while at the same time the auction markets may be glutted, with very low and losing prices.

Under the present method of transportation and marketing of California fresh-fruit shipments, it is possible for the Armour Company to so favor and protect members of the California Fruit Distributors as to afford them an opportunity of making a possible profit of $2,000 a car or more, while at the same time the growers of the fruit will receive for their product but little, if anything, more than the actual cost of production.

In evidence of the correctness of this statement your attention is called to the following table, which shows transactions in 1903, when the distributors fixed the f. o. b. price to be paid for Bartlett pears at 50 cents per box, with 10 per cent off for commission, thus reducing the price to 45 cents per box, a net reduction in the cost of a carload of $24. The same rate of commission is charged for plums and prunes, which amounts to $28.28 per carload.

Does anyone here or elsewhere believe that the Armour Company would overlook an opportunity of this kind, or make no effort to profit by it? Does the history of the company justify such a conclusion?

If the organization commonly called the California Fruit Distributors is not a trust in the fullest sense of the term, then what is it?

What power does it lack to make it such?

Its management claims that it has absolute control over the distribution of all the fruit shipped by and through its members, and that it controls about 85 or 90 per cent of all fruit shipped.

What more power could a real up-to-date trust ask for when consideration is given to the fact of the very delicate and perishable nature of the products it is handling? And still more important is the fact that its members can force any proportion of the business it is handling into consignment, which proportion can be used at any time it may be deemed necessary and prudent to destroy all competition by causing heavy losses to be made by any and all who might presume to go into the fruit shipping and marketing business in competition with those of its members who are engaged in the f. o. b. business.

No other combination or trust in the world possesses the power to destroy competition as do members of the distributors, for the reason that they can force shipments of consigned goods of such a delicate nature by simply refusing to buy them at any price.

Consignments can be used by the f. o. b. buyers for another equally important purpose. They can be sent into the auction markets and such other markets as they may wish to demoralize and in such quantities as will demoralize prices to any degree necessary, to cause loss to the growers sufficient to make them willing to sell their product at any price, with a 10 per cent commission off, the f. o. b. buyers may see proper to offer.

Regarding fresh deciduous fruit shipments, I will say that I have not heard of anyone claiming that, as a whole, the prices they brought last season were satisfactory. Everybody who has taken the trouble to investigate knows that the growers lost heavily on many of their consignments.

I will call your attention to the sale of F. G. E. 21101, shipped from Sacramento by the Earl Fruit Company and sold in New York on August 3, 1904. It was a solid car of Bartletts of 480 boxes, and brought on an average $1.33 per box, or $639.80; the freight and refrigeration cost $460; commission, $44.78; boxes, packing, paper, local freight, $96; loading, $8.80, making $609.58; leaving a balance of $30.22, or a fraction over 6 cents and 2 mills per box for the grower, with which to pay the cost of production, picking, hauling, etc., or a net loss to the growers of about $400.

C. F. X. 10472 was shipped from Newcastle by the Producers' Fruit Company and sold in New York on August 4. This was a mixed car. Its contents were 183 boxes of Bartletts, 311 peaches, and 315 plums and prunes. The cost for transportation, commission, boxes, loading, hauling, etc., was $665.74; the gross sale of the car was but $593.85; leaving a loss of $71.89.

The loss here given does not include the cost of production, picking, taxes, interest, etc., which would make an approximate loss to the growers of something like $500.

I will call your attention to the sale of one more car, C. F. X. 10118. It was shipped from Folsom by the Earl Fruit Company and sold in New York on August 9.

The contents of the car were 140 boxes of peaches, 9 half boxes of Bartletts, 6 full boxes of Bartletts, and 781 packages plums and prunes of various varieties, a total of 945 packages. It was about 400 pounds overweight and grossed only $546.15, $47.70 less than the car just above mentioned, or a loss to the growers of about $550.

Mr. STEVENS (continuing). That was the loss in the case of those cars.

Senator KEAN. Why was that?

Mr. STEVENS. Why? You will have to ask the distributers. They know more about it than anybody else.

Senator KEAN. We can not legislate as to the price you are to get for your fruit.

Mr. STEVENS. I only refer to the prices to show the conditions——

Senator KEAN. Then you ought to seek another market instead of the New York market.

Mr. STEVENS. That was the best of all of them. As I said, the loss on that car would be at least $500 to the grower; that was the least loss on any of those cars. Now, here is a table that I prepared, and it is absolutely correct. It shows the shipping of 6,676 cars. This is taken from the report of the distributers themselves. Three thousand five hundred and sixty-six cars are all that were reported. The presumption is, and it undoubtedly is correct, that the 3,110 cars that are not reported are the f. o. b. cars bought by the members of the distributers and sold at a possible profit of $1,550. That is the kind of an institution they have got there.

I have another table here which will prove the correctness of these statements, and I wish you would consult these tables. This gives the actual price paid by the distributers for the fruit in 1903. It shows the cost to a cent of the shippers, the transportation, the refrigeration, the cost of packing, the paper, and so forth, and each price that they might sell for, showing the possible profit. The minimum profit is about $268 a car. And that fruit would sell for a low price, comparatively speaking.

Here is another table which shows the manner in which the distributors distribute the fruit. Of these 3,664 care shown here, there were 2,862 sold in New York, Chicago, and Boston and only 802 sold in 120 other markets, as reported. I have here another table showing a comparison of the prices of 1903 and 1904, showing that the losses on the week ending August 5, 356 cars, averages $429, or an aggregate of $152,724. That is the cars sold in all the markets. That is not one market, or anything of that kind.

I wish to say, and I say it positively and I know it to be so, that the members of the distributors can absolutely control our eastern market. All they have to do, if you gentlemen are growing fruit, is to refuse to buy it. In most cases you will have possibly three days' grace in which to pick and pack that fruit, or it goes to waste. You can either pick it and pack it and deliver it to the car door, where your rights cease, because you have no voice in saying where or to whom it shall go, or you can let it rot.

Senator FOSTER. Do they buy it from you then?

Mr. STEVENS. Yes; and it is not a very difficult matter to understand that if there is a market of a dollar a package you will not get my fruit for 30 cents a package. Therefore their interests lie in demoralizing the auction markets; they must bring the price down. I want you to take into consideration, gentlemen, the fact that there is a large percentage of the growers in the State of California that are held in the palm of the hand of these distributors, for the reason that when one becomes encumbered to any great degree there is no savings bank in the State of California which will loan him money upon his property, except on its value for other purposes. The orchard, the vineyard, is regarded as an incumbrance, and the only

persons from whom we can borrow money on such security are the members of the distributors, and when we borrow $5,000 or $10,000 or $20,000, and in some cases I know of $35,000, on good holdings, we stipulate in the crop mortgage which they demand that we will market our fruit through them, the firm or individual that loans us the money. The borrowers must also agree that they shall buy all supplies that they need from the distributors; and therefore their property is absolutely under the control of those parties who loan the money. As you will see, they can afford to do it, because they have got the handling of your products, which may mean ten or fifteen or twenty thousand dollars per annum to them, according to the magnitude of your holdings. These are not misrepresentations; they are facts. Now, the small grower, for instance——

Senator KEAN. Is there not something the matter there; are there not too many people in the business of growing fruit?

Mr. STEVENS. I assume one side or the other, either that there is an overproduction or else there is something wrong with the transportation and marketing of the fruit products of California. I do not believe that there is an overproduction, provided it is handled properly; but I will say to you gentlemen that I believe that if I had such an opportunity I would fall from grace. If the State of California, with an investment of probably $200,000,000 in horticultural interests, could be turned over to you, Senator, and to me, I doubt very much if we would not, after considering it a while, take advantage of the fact and make as much out of it as we could.

Senator KEAN. Have these charges ever been investigated in California?

Mr. STEVENS. They are investigated in this way. Here is a report. I have been chairman of the transportation committee probably for twelve years. I have always, unfortunately for me, probably, been in favor of the under dog.

Senator KEAN. You have been pretty successful in life, have you not?

Mr. STEVENS. Well, before the war, it was a good deal like "before the war;" there was a time when I made money and made plenty of it, but without any hesitation or any misrepresentation I will say to you gentlemen that my losses have been $2,000 a year for the last three years. How long can I last, that is the question?

Senator KEAN. What do you raise—grapes?

Mr. STEVENS. Grapes and tree fruit. I have 70 acres or perhaps about 80 acres of tree fruit and about the same in grapes. What I made on the grapes I lost on the tree fruit.

I want to be as brief as possible, because I do not want to take three days or anything like that much time. I am talking about the shippers. There seems to be a great affinity existing between the shippers and the transportation companies. Why? Perhaps you can understand as well as I can. But there is a great affinity; there are plenty of growers if you go to them who will not dare to say that they are opposed to the Armour Car Line, and it is only recently that a sufficient number of them have been awakened to the fact that they had to do something or leave their property. This evil that I have spoken of does not end with taking all the profit in fruit growing. If it did we might possibly rest for a few years until relief would come in some manner. But it also takes the property at its back, as is evidenced by mortgages, property and crop mortgages, which are

given. I know one case where a man's property is worth $90,000, or should be. There are two partners. One is a business man, and a very sharp one too; he loans money at a big per cent; the other fellow is a common kind of a fellow like I am; he is a rancher; he doesn't do any other business except grow fruit. They allowed him $15 a month for his personal expenses; not one cent more could he draw. Every cent's worth of produce grown upon that place had to be turned over to the company holding the crop mortgage to do with it as it pleased. Every dollar's worth of supplies was furnished by that company, and when the bills, or some of them, by accident, reached him and he saw the real cost with the per cent off, he went to them and he said: "Here, I am entitled to a certain per cent off on all my bills," and they said, "No; we have to have something for bookkeeping." So they not only make profit on the products, but a profit on the supplies they buy and furnish.

Senator FOSTER. Is this the distributing company?

Mr. STEVENS. Yes; a member of the distributing company. Of course Mr. Robbins said, and there is no reason why he should be doubted any more than any other business man should be doubted, that the Earl Fruit Company was purchased by the Armour Company, but that it had disposed of its interest in the Earl Fruit Company. It is generally understood and accepted, and to-day I do not believe there is anybody who would deny it, that that fruit company is under the control of the agents, the friends, of the Armour Company. I understand that experts are sent out from Chicago to expert the books and all those things, and they are in the same building.

I had the pleasure of listening to the gentleman from Tennessee yesterday; I think it was yesterday or the day before, anyway it is immaterial. He says that the shippers and the transportation companies are on the most friendly terms in his State; that there are scarcely any differences. I wish to call attention to the fact that Tennessee and California are quite different. There is only a small portion of California that has fruit interests, and in that section there is no competition at all. The growers have to ship over the Southern Pacific and use the Armour car lines.

The question was brought up this morning in regard to the Santa Fe Railroad, which runs through the Sacramento Valley. That locality ships, probably, more than twice as much fruit as any other locality in California. Of course I am referring now to deciduous fruits. I do not mean oranges or lemons. If they entered into competition with the Southern Pacific, as testified by Mr. Leeds, they gave a rebate of $25 for the short haul to Chicago and $35 for the long haul. But, as would be inferred and implied by the gentleman this morning—and I had a talk with him afterwards—it would seem that that was given in the way of a reduction in refrigeration, and as a matter of fact that is not true. It was a rebate and that rebate was handed over to one individual. If he saw proper to distribute it among the growers, all right. I justify the Santa Fe in that. I am opposed to rebates in any shape or form or manner, but if you are fighting the devil you have to fight him with fire. The Santa Fe would not have received a carload of fruit from the Sacramento River in the way of tonnage to its system if it had made a reduction of $35 a car on refrigeration. And why? Because this combination known as the California Fruit Distributors——

Senator KEAN. That is a State institution, is it not?

Mr. STEVENS. Yes; a State institution. This combination, the members of which control the tonnage——

Senator KEAN. Are they all citizens of California?

Mr. STEVENS. Absolutely. Wherever the Santa Fe does not enter, as I am trying to explain, because you have no option, you have to take an Armour car. We are trying for relief. We want the Santa Fe or some other road to come in there, but unless there are some restrictions even that might ultimately prove to be of no benefit, because the Santa Fe, after getting what it wanted from the Southern Pacific, could join the Southern Pacific and take all our property, the same as they are doing now. But at the present time our prayer is that the Santa Fe or any other road will come in. I extend the invitation to the president of the Northern Pacific to come down to Sacramento with his road. I will state my understanding is that the Northern Pacific and other roads carrying out of Washington and some parts of Oregon where the Armour Company and the Southern Pacific do not operate have rates of refrigeration much lower.

Mr. ELLIOTT (of the Northern Pacific Railroad). I do not know the rate from California; the Northern Pacific rate is $25 a car for refrigeration.

Mr. STEVENS. I am much obliged; the rate from Sacramento is $100 a car.

Mr. ELLIOTT. To where?

Mr. STEVENS. To New York.

Mr. ELLIOTT. How many miles?

Mr. STEVENS. About 3,000, I think; but that has got nothing to do with it. To Chicago, I think, it is $80. Nine miles out of Sacramento City it is $15 more. You understand the rate 9 miles farther from Sacramento is $115, and from other localities it is $120. The average rate, I estimate, and I have made statistics for three or four years, is about $106 per car for all destinations from points in the State of California to all destinations in the East—the average is about $106.

Senator KEAN. That is, to New York?

Mr. STEVENS. No, sir; to the whole eastern slope.

Senator KEAN. To Boston and Philadelphia?

Mr. STEVENS. Yes; and to Duluth, Minneapolis, Kansas City, Denver, and all the eastern slope—every place where a carload is sent. The rate to Boston is still higher—that is, still more. It is $125 a car from the maximum rates.

Now, what the fruit growers desire you to do is to investigate this, and, if nothing else, to place the private car lines under the control of the Interstate Commerce Commission, the same as other transportation interests.

Senator KEAN. That request we can consider, but your other request does not come within our province.

Mr. STEVENS. What is that?

Senator KEAN. We do not think we have any right to investigate the private citizens of California, or try to regulate the amount of fruit grown, or regulate the price.

Mr. STEVENS. Reference was made to those facts, Mr. Chairman, in order to direct your attention to the necessity that something should be done that would limit the power of the Armour Company. That is, we want relief.

Senator KEAN. We shall be glad to consider that request.

Mr. STEVENS. These statements here made and the data which I will give you are given with that wish and desire, that you may be informed as to the conditions existing there, the conditions under which the deciduous fruit shipments are made, so that you may understand that some relief must come to the interest or that there will be a very large number of people ruined.

Senator KEAN. Do you get the same rate that everyone else does?

Mr. STEVENS. Yes; I have the privilege of paying the full rate and have demanded that right for many years and have not considered any other proposition.

Senator KEAN. Have you ever tried to get a reduction?

Mr. STEVENS. No, sir. I won't say that they have not been trying to induce me to accept a reduction.

Senator KEAN. These charges were investigated by the Interstate Commerce Commission, were they not?

Mr. STEVENS. I presented the same thing to the Interstate Commerce Commission; yes, sir.

Senator KEAN. What was the result?

Mr. STEVENS. I submitted it the other day. I will say that I have credentials to that Commission from the different fruit organizations of the Sacramento River. There are two fruit organizations on the Sacramento River where they get relief to the amount of $35 a car on the long haul and they are not satisfied; they want you gentlemen to do something; they want something of a substantial nature or character. For instance, I will call your attention to this fact, that $35 will not pay the loss of $500; it will not compensate.

In conclusion I will say that we desire that Congress take such action as will compel the transportation companies to furnish their own refrigeration cars when necessary and icing at actual cost, and that all charges for transportation of all character shall be included in the freight charge.

The tables referred to by Mr. Stevens are as follows:

This table shows the number of cars shipped from June 23 to October 30, in 1903, as reported by the California Fruit Distributors, to have been 6,676, of which number only 3,566 were reported sold in the auction markets, thus leaving a balance of 3,110 not reported, which, it is reasonable to presume, were F. O. B. that were sold in markets other than auction markets. That would result in an average profit of $500 per car, or a total profit to the F. O. B. of $1,550,000, while at the same time the loss on the 3,566 cars sold in the auction markets, including interest on the grower's capital invested, was $338,929, as shown on page 31 of statistics computed by R. F. Stephens, of Sacramento, for the season of 1903.

To bring such an enormous profit to the F. O. B., pears would have to sell for only $2.50 per box and plums and prunes for about $1.40.

Date.	Cars shipped.	Date.	Cars shipped.	Date.	Cars shipped.
June 23–July 13	859	Aug. 22–28	371	Oct. 10–16	265
July 14–17	211	Aug. 29–Sept. 3	423	Oct. 17–23	203
July 18–24	456	Sept. 4–11	460	Oct. 24–30	198
July 25–Aug. 2	692	Sept. 12–19	375		
Aug. 3–7	496	Sept. 20–25	334	Total	6,676
Aug. 8–14	456	Sept. 26–Oct. 2	265		
Aug. 15–21	383	Oct. 3–9	234		

Date.	Cars reported sold.	Cars not accounted for.	Date.	Cars reported sold.	Cars not accounted for.
July 6-27	695	224	Sept. 26-Oct. 3	145	220
July 28-31	172	39	Oct. 4-9	106	209
Aug. 1-7	308	154	Oct. 10-16	123	149
Aug. 8-15	356	336	Oct. 17-23	134	100
Aug. 17-21	275	221	Oct. 24-30	106	197
Aug. 22-28	213	243	Oct. 31-Nov 6	78	135
Aug. 29-Sept. 4	161	202	Nov. 7-13	71	123
Sept. 5-11	209	162			
Sept. 12-17	199	234	Total	8,566	8,110
Sept. 18-25	270	190			

The following table shows profits that can be made by F. O. B. buyers who belong to the California Fruit Distributors, and who at the same time are doing a commission business and in control of consignments from growers, with full power to send such shipments to any destination that will best promote their own interests:

Sales and possible results.

BARTLETT PEARS.

Number of boxes in carload.	F. O. B. cost.	Cost of boxes, paper, and packing.	Freight, long haul.	Refrigeration.	Total cost.	Price sold at.	Gross sale.	Profit, long haul.	Profit, short haul.
480	$240	$72	$360	$100	$772	$4.00	$1,920	$1,148	$1,228
480	240	72	360	100	772	3.50	1,680	908	988
480	240	72	360	100	772	3.00	1,440	668	748
480	240	72	360	100	772	2.75	1,320	548	628
480	240	72	360	100	772	2.50	1,200	428	508
480	240	72	360	100	772	2.25	1,080	308	288
480	240	72	360	100	772	2.00	960	188	208

PLUMS AND PRUNES.

940	$282	$153	$360	$100	$895	$3.00	$2,820	$1,925	$2,005
940	282	153	360	100	895	2.50	2,350	1,455	1,535
940	282	153	360	100	895	2.25	2,115	1,220	1,300
940	282	153	360	100	895	2.00	1,880	985	1,065
940	282	153	360	100	895	1.75	1,647	752	832
940	282	153	360	100	895	1.50	1,410	515	595
940	282	153	360	100	895	1.25	1,175	280	360

Sales before mentioned by the week instead of cities.

[From statistics published by R. D. Stephens, of Sacramento, Cal., for the season of 1904.]

Week ending—	Cars reported sold.	Gross.	Average	Total cost to grower, including interest.	Profit	Loss.	Long haul.	Short haul.	Reported sold in New York, Chicago, and Boston	Reported sold in other places.
July 22	287	$232,052	$808	$327,466	.....	$95,414	$183	$104	$230	$57
July 29	389	273,719	852	368,636	.....	94,917	209	114	220	93
August 5	356	247,881	696	403,597	.....	55,716	230	126	258	98
August 12	401	273,310	681	451,880	.....	180,570	248	153	302	99
August 19	364	296,236	811	415,012	.....	119,776	209	155	279	85
August 26	335	272,839	957	327,770	.....	54,931	171	114	[illegible]	78
September 2	221	228,817	1,035	256,948	.....	20,631	123	88	182	39
September 9	196	215,158	1,097	227,494	.....	12,336	120	76	168	28
September 16	280	222,192	986	256,588	.....	34,396	142	88	182	48
September 23	255	281,913	1,027	294,637	.....	32,724	144	111	205	50
September 30	283	280,902	1,068	305,074	.....	24,082	166	97	220	43
October 7	198	222,006	1,158	224,050	.....	1,994	131	61	156	36
October 14	144	157,718	1,095	157,972	.....	254	71	73	118	26
October 21	147	178,400	1,213	171,615	6,785	.....	77	70	125	22
Total	3,664	3,382,252	.....	4,188,148	6,785	832,641	2,234	1,430	2,862	808

Your attention is called to the manner in which the fruit was distributed.

The long and short haul.

Particularly to the number of cars reported sold in New York, Chicago, and Boston—2,802—as compared with the number represented sold in all other places—802.

Comparing sales of 1904 with sales in 1903.

[From statistics published by R. D. Stephens, of Sacramento, Cal., for the season of 1904.]

Week ending—	Reported sales of California fruit in eastern markets, 1904		Reported sales for corresponding week, 1903.		Reported sales of 1904 compared with the sales reported in 1903.					
	Cars reported sold.	Gross sales reported.	Cars reported sold.	Gross sales reported.	Average, 1903.	Average, 1904.	Average gain.	Average loss.	Total gain.	Total loss.
July 28	287	$222,058	$305	$220,041	$1,073	$806	.....	$265	.....	$76,065
July 29	383	278,719	216	260,899	1,161	852	.....	309	.....	79,907
August 5	356	247,881	294	330,783	1,125	696	.....	429	.....	152,784
August 12	401	273,310	353	337,064	954	681	.....	273	.....	109,478
August 19	364	295,236	253	283,486	1,077	811	.....	266	.....	96,894
August 26	285	272,839	226	262,898	1,153	957	.....	206	.....	53,710
September 2	221	228,817	226	247,180	1,093	1,035	.....	58	.....	12,816
September 9	196	215,158	220	211,961	963	1,097	134	.....	26,264	.....
September 16	230	222,192	262	246,620	941	966	25	.....	5,750	.....
September 23	255	251,913	222	245,645	1,106	1,027	.....	79	.....	20,145
September 30	263	290,992	149	176,147	1,182	1,068	.....	114	.....	29,982
October 7	192	222,065	125	149,350	1,195	1,156	.....	39	.....	7,488
October 14	144	157,718	131	181,928	1,285	1,095	.....	141	.....	20,304
October 21	147	178,400	128	139,867	1,092	1,213	121	.....	17,787	.....
These footings show loss in 1904 as compared with the sales of 1903	.....	.....	.....	.....	.....	.....	.....	.....	49,801	684,380

Careful study should be given to the columns giving car averages—1903-4—which plainly show that when full shipments are put into the auction markets the prices received are ruinous to the growers.

For instance, take the sales made during the week ending August 12 of this year, the average per car was $681, or $429 less per car than the sales made in the corresponding week last year.

Thereupon, at 5.40 o'clock, the committee adjourned until Monday, May 22, 1905, at 11 o'clock a. m.

MONDAY, *May 22, 1905.*

The committee met pursuant to adjournment.

Present: Senators Elkins (chairman), Cullom, Kean, Dolliver, Foraker, Clapp, Foster, and Newlands.

STATEMENT OF MR. E. T. KOCH.

Senator KEAN. You may state your name, residence, and occupation.

Mr. KOCH. E. T. Koch. I reside at Cedar Rapids, Iowa. I am the traffic manager of T. M. Sinclair & Co.

Senator KEAN. What is the business of that company?

Mr. KOCH. Pork and beef packers.

Senator KEAN. You may proceed and state what you have to say. You may make whatever statement you desire.

Mr. KOCH. I especially desire to have it understood that I am not here as the representative of any commercial body or association of business men of the State of Iowa.

Senator KEAN. You come here as an individual?

Mr. KOCH. I have, in what we believe to be the interests of T. M. Sinclair & Co. We give a liberal tonnage to the railroads and feel

that we are in a position to have some understanding of the situation; we are not in accord with this clamor in the country for increased legislation in the direction of railroads, in so far as their rate-making power is concerned. We are opposed to that for many reasons.

Senator KEAN. State some of them.

Mr. KOCH. We have no doubt but that the many shippers of the country have some grievances, almost all of us have something to trouble us; none are perfect. We frequently find it necessary to approach the traffic officials of the various roads interested in our traffic and as a rule find them courteous and considerate. We have never asked for a rate or basis of rates that would give us an advantage over our competitors. We believe the railroads are justified in maintaining a basis of rates that will enable them to maintain themselves in the high state of efficiency the demands of the public require and thereby transact their business in the way of maintenance of way and equipment to the degree required for the movement of tonnage and passengers at the least possible cost per mile. The public generally demand the very best service possible from the railroads, yet rarely take into consideration what an extensive outlay of money it requires to put them in condition to serve them as they demand in both the movement of passengers and of freight.

We trust you may not have the impression from what we may say that we are unutterably opposed to any and all legislation with reference to the management of the railroads that are engaged in interstate traffic. We do think, however, that nothing in the history of the Lower House of Congress has ever occurred which has so universally startled the commercial interests of the country to the degree that their recent actions with reference to the control of railroads has done, believing that this most vital matter should be managed and worked out only along lines entirely free from bias.

We understand the present interstate-commerce law, reenforced by the Elkins Act, all sufficient for the protection of the commercial interests of the country, and with this as we understand it the privilege the Interstate Commerce Commision has of demanding an immediate hearing in the courts, places the matter, it seems to us, in a position where the shipper can have absolute protection from any discrimination on the part of the railroads.

We therefore believe that additional legislation along the lines tending in the direction of placing the power in the hands of a commission to name the railroad rates in this country is not desirable.

All railroad owners in this day and age are looking for men who have ability to build up the countries through which they operate. If this is accomplished, what more can we desire from a business standpoint?

It is, in my opinion, gentlemen of the committee, a question of the survival of the fittest. We do not believe you can legislate brains into a man's head; you may legislate money into his pocket temporarily.

With your permission I will quote a few lines from an address of Mr. Samuel Spencer, president of the Southern Railway, delivered a few days ago, bearing somewhat upon this subject:

> The spirit of industrial and commercial combination, founded on the fundamental laws of economy, of production, and of cheaper distribution, can never

suppress or diminish the personal activity of any citizen, except of one whose natural limitations disqualify him for successful competition with his superior neighbor.

We feel that we are indeed fortunate in having an interstate-commerce law and a Commission composed of highly intelligent gentlemen, whom we believe to be able and absolutely trustworthy and entitled to the confidence of all, and that through their enforcement of the laws that have already been enacted for the protection of those engaged in commercial pursuits we are amply protected.

Senator KEAN. What roads operate through where you are located?

Mr. KOCH. We have four western trunk-line systems operating through Cedar Rapids—the Chicago, Milwaukee and St. Paul; the Chicago, Rock Island and Pacific; the Chicago and Northwestern, and the Illinois Central.

Senator KEAN. Are the rates reasonable?

Mr. KOCH. We think they are.

Senator KEAN. Enabling you to ship your products how far?

Mr. KOCH. To any point on the globe.

Senator KEAN. Are there no rebates given at the present time?

Mr. KOCH. There are no rebates given that I know of.

Senator KEAN. What is the general sentiment of the community in which you live in regard to the regulation of railroads and the way they are run at the present time? Do you hear many complaints?

Mr. KOCH. If we confine ourselves to the newspapers we get the impression there are many. I have heard but one complaint from a shipper. That was with reference to fruit shipments from California, which I was advised was moved on a basis of rates through the State of Iowa to the Mississippi River and from the river points distributed back through the State of Iowa, supplying the customers of the interior jobbers at a lower price than the interior jobber was able to make. His fruit direct from California points to interior Iowa points for distribution in his own State made a higher rate of freight. In both instances the Iowa distance tariff would apply in the distribution through the State.

Senator KEAN. You have no complaint to make?

Mr. KOCH. No, sir.

Senator KEAN. You are satisfied with the existing conditions?

Mr. KOCH. Perfectly so.

Senator KEAN. You think no additional legislation is necessary at the present time?

Mr. KOCH. I do not think additional legislation necessary at this time.

Senator DOLLIVER. Mr. Koch, just what is your business?

Mr. KOCH. I am the traffic manager in connection with the packing establishment of T. M. Sinclair & Co., of Cedar Rapids, Iowa.

Senator DOLLIVER. I want to know what the state of the railroad rates is, as to packing-house products, compared with the rates on live stock?

Mr. KOCH. If it were not for the friendly feeling of the railroads in putting a basis of rates from the Mississippi River to such points as we may desire to reach, we would not be able to prosecute business in the State of Iowa, owing to the effect of the local distance tariff rates that are promulgated by the State railroad commissioners.

Senator DOLLIVER. I am now talking about the interstate rates. Is there a discrimination in favor of packing-house products or in favor of live stock as against packing-house products in the present interstate rates?

Mr. KOCH. I do not consider the present basis of rates as being a discrimination in favor of either the live stock or packing-house products.

Senator DOLLIVER. Is live stock carried cheaper than packing-house products?

Mr. KOCH. Not that I know of.

Senator DOLLIVER. What is the rate on live hogs from Cedar Rapids to Chicago?

Mr. KOCH. Eighteen and one-half cents.

Senator DOLLIVER. What is the rate on packing-house products from Cedar Rapids to Chicago?

Mr. KOCH. You refer to the present rates?

Senator DOLLIVER. Yes.

Mr. KOCH. Thirteen and one-half cents.

Senator DOLLIVER. So that it is about 4 cents less?

Mr. KOCH. Yes, sir.

Senator DOLLIVER. Do you regard that adjustment of rates, which, I presume, prevails elsewhere in Iowa, as favorable or unfavorable to the packing industry in the State?

Mr. KOCH. I do not consider it as an unreasonable adjustment of the rates to cover our tonnage from Cedar Rapids to Chicago locally.

Senator DOLLIVER. Is it favorable or unfavorable to the industry to have that discrimination in favor of the product?

Mr. KOCH. We do not consider it as a discrimination. It might be lower and then not be a discrimination. It is an interstate rate, made necessary through the effect of a local State rate.

Senator DOLLIVER. Do you understand it has been testified here that the packing-house industry has been crippled and greatly hindered by reason of the fact of a lower rate on live stock to Chicago than there is on the packing-house products, that encourages the movement of live stock out of the State instead of encouraging the manufacturer of it in the State? I want to know what you have to say about that.

Mr. KOCH. Senator, with your permission, I will answer that question in this way: If we are to have an Iowa distance tariff and a set of rates governing the movement of tonnage by railroads within the State that must be adhered to, the Iowa railroad commissioners, whose duty it is to make them, I believe will have to modify their views somewhat if they alone are to be a convincing argument to capitalists who may wish to embark in the manufacturing business in Iowa. Fortunately for those engaged in the hog-packing business at present, I will say that through a basis of interstate rates now in effect from the borders of the State, arranged by the railroads, we are placed in a position to compete with some degree of satisfaction with those situated in other localities not similarly situated with reference to State rates. Without the interest thus manifested on the part of the railroads we would be in a sad plight. It is the railroads' arrangement of rates outside the State that makes it possible for the pork-packing industries within the State to thrive.

You will see from this statement, I hope, that it is possible for those who may wish to engage in this particular line to succeed, there now being old established houses that have been in operation continuously for many years—T. M. Sinclair & Co. since 1870. I trust I have given you a reply that will convey to you the information you desire.

Senator DOLLIVER. I think that is all.

STATEMENT OF MR. J. B. BAYLOR.

Senator CULLOM (in the chair). Please state your residence and business.

Mr. BAYLOR. My residence is Milford, Caroline County, Va.

Senator CULLOM. If you have any statement to make, please proceed to make it.

Mr. BAYLOR. Mr. Chairman, I bespeak for myself and for those I may be said, in a measure, to represent—the landowners of Virginia—fair and honorable treatment at the hands of this committee. We are the children of the founders of this Republic. We merit fair and honorable treatment at your hands. No people in history ever sacrificed more for a nation.

What would the great manufacturers of this country do if Congress were to-day to present to their southern competitors, "free gratis and without price," up to date manufacturing plants to compete with them? And yet free western farms, all cleared, were given to the poor of this country, and, indirectly, through the great railways, to the poor of Europe as well.

The credit of the nation is to-day being used to establish great irrigation systems to reclaim for farms the arid regions of the West. These free farms, I frankly admit, have made this a great and mighty nation. I glory in it, but in common equity we, as well, should have had free manufacturing plants to furnish indirectly homes for the poor.

It is hardly necessary for me, Mr. Chairman, to tell this committee that the first railways which were ever chartered in the world were chartered as toll roads. I do not believe it would have ever been possible in the first instance to clothe a corporation with the power to take forcible possession of private property by condemnation, except to operate toll roads. I know of no toll road where the toll charged has not some relationship to the distance to be traversed. There may be different rates of toll, depending on the amount of the traffic of the highway and on account of the cost of the highway itself, arising from the topographic features of the country, but there is always a direct relationship between the money received and the service rendered. Common equity, common justice demands it.

As our great railways are run to-day, clothed with the extraordinary right to take forcible possession of private property by condemnation, there is absolutely no relationship between the service performed and the pay received. This act of injustice, I firmly believe, has destroyed the value of our eastern lands so that some of our agricultural counties in Virginia are less populous to-day than they were when the first national census was taken in 1790.

I have some official railway rates furnished by railways and the United States Corporation Commission, which I wish to bring before this committee. They directly affect me; they clearly indicate what

I wish to bring to the attention of this honorable committee. I have devoted myself exclusively to one agricultural crop—corn—the greatest of American crops. The facts brought out here apply with equal force to all grain crops, tobacco, and live stock as well.

I look upon the Mississippi River and the Great Lakes as great highways of commerce, free alike to all. No condemnation of private property was necessary to open them. It is the misfortune of our railways that they have to compete with them.

Mr. Chairman, there were furnished me on Saturday by the United States Corporation Commission some figures, from which I find that at the present time corn can be brought in carload lots from Chicago to Newport News for 12 cents per hundred pounds and for export for 11½ cents per hundred pounds. When that corn comes from west of the Missouri River it is brought for 10 cents. I have at present some corn that I would like to ship to Newport News, and consequently I wrote to the traffic manager of the Richmond, Fredericksburg and Potomac Railroad Company upon the subject and have his reply, as follows:

RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY,
WASHINGTON SOUTHERN RAILWAY COMPANY,
RICHMOND-WASHINGTON LINE,
Richmond, Va., May 16, 1905.

Mr. J. B. BAYLOR, *Cosmos Club, Washington, D. C.*

DEAR SIR: We have your favor of 15th instant, and beg to advise that the present rate on corn in carloads, 24,000 pounds minimum, from Milford, Caroline County, Va., to Newport News, Va., via Richmond, Va., and the Chesapeake and Ohio Railway, is 10 cents per 100 pounds plus $1.50 per car for Richmond transfer.

Yours, truly, W. P. TAYLOR, *Traffic Manager.*

That is, I have to pay for transit 120 miles as much as the western farmer has to pay for transit over 1,000 miles. I also have to load this car myself at the station. In connection with this subject, I will read the following letter from the assistant general freight agent of the Norfolk and Western Railroad Company:

NORFOLK AND WESTERN RAILWAY COMPANY,
Roanoke, Va., May 18, 1905.

Mr. J. B. BAYLOR, *Cosmos Club, Washington, D. C.*

DEAR SIR: Referring to your letter 15th instant, addressed to the traffic manager of the Lynchburg and Durham Railroad, Lynchburg, Va., beg to advise we can quote you rates on corn, carloads, 30,000 pounds minimum, from Clarkton, Va., to Norfolk, Va., 12 cents per hundred pounds.

Yours, truly,

O. HOWARD ROYER,
Assistant General Freight Agent.

That is all I have to say, gentlemen.

Senator CULLOM. We are much obliged to you.

STATEMENT OF HON. JOSEPH W. FIFER, INTERSTATE COMMERCE COMMISSIONER.

Senator CULLOM (in the chair). Judge Fifer, we shall be glad to hear you now.

Mr. FIFER. Mr. Chairman and gentlemen of the committee, I appreciate the fact that you have been here for a long time patiently and thoroughly investigating the matters which you have under consideration, and I shall therefore detain you for but a short time.

I regret exceedingly that our railroad friends deemed it necessary

for the proper presentation of their case to criticise the Commission as harshly as they have done. As I read from day to day these criticisms in the newspapers, I felt that they were making a mistake, and I entertain that opinion still. Many bitter things might be said in reply, I expect; things that will suggest themselves to the dullest mind, but I decline to enter that field and will leave the subject with this single further remark: If members of the Commission have manifested some feeling, apparently, in regard to this subject, we beg the committee to remember the provocation. Our friends may possibly have learned by this time that hunting the tiger is fine sport, but the fun all ceases when the tiger hunts them.

I have thought that I might aid the committee to a proper solution of the questions it has under consideration by a brief reference to the regulating statute as it now stands. Turning to that law you will find the first five sections of the statute impose most of the duties and obligations upon the railroads. They are the most important sections in the statute. What are they?

First. That all rates must be reasonable and just, and that rates that are not reasonable and just are declared unlawful.

What next? The second section provides that rebates and drawbacks shall not be paid. That is called by the Commission the "personal discrimination section."

The third section provides against discrimination between localities.

The fourth is the long and short haul provision.

And fifth, pooling.

If you will examine the statute you will find that nearly all the other provisions, for the most part at least, are intended to give vitality and force to these five sections. How do they do it? I need not go over all the powers that are delegated.

First, the Commission was provided for and certain powers given to the Commission, the power to issue subpœnas and compel attendance of witnesses, the production of books and papers, and to administer oaths. The railroads were required to make reports, among other provisions. But all had reference to giving vitality, force, and effect to the first five sections of the act. I shall endeavor to show, later on, that these powers are not sufficient. Around those five sections rages this contest, and I feel that I am not saying too much when I say that that citadel has been taken and lost, perhaps, in the minds of the members of this committee, several times since these discussions were begun.

What ones of those five sections are in dispute here? Not the fifth section, with reference to pooling. We can cut that right out and set it aside as having nothing to do, as I understand, with the discussion. We can dispose of that. The shippers are unwilling to grant the power of pooling on the one hand, and, on the other, many railroads do not want pooling. It has been said here and contended by those who are pressing for an amendment of this law that the railroads now do not desire pooling, for the reason that they have combined.

Then, the pooling section being out of consideration, what is left? The second section, which provides that railroads shall not pay rebates and drawbacks. Is there any dispute in regard to that section? *Not a particle. I firmly believe that there is not a railroad*

in the United States, or any of its officers, that would not stop rebates and drawbacks if it had the power to do so. The railroads are the losers when drawbacks are paid, and if they could stop them they would do so and preserve their business.

Before I pass to the other sections I want to make this observation: Our good friend Mr. Hines said that the second section was the most important provision of the whole act, and that the principal object that Congress had in enacting the law was to prevent rebates and drawbacks. In that statement I do not agree. Let us see. What class of people are affected by rebates and drawbacks? Who are injured and who are benefited?

In saying what I shall on that subject, I want it understood that I do not in the slightest degree minimize the evil results flowing from the payment of rebates and drawbacks. They are the Pandora's box from which flow many evils, and, in the language of the President, they should be stopped. Let us examine, now. Who are affected by rebates and drawbacks? The railroads, of course, because they pay the money. Who are benefited? Unfortunately, only a few large shippers. There are remote consequences that follow also. The payment of rebates to the large shippers enables them to break down and run out of the business their competitors, thereby lessening the number of persons to whom the original producer can sell his goods. Those rebates do not affect the producer, such as the grain grower out on the broad prairies of Illinois and Iowa. Many of those people never pay a railroad rate. They do not deal with railroad men. They haul their grain to the markets in wagons, and there it is sold. Those men are more directly interested in the size of the rate than they are in regard to rebates. But it is utterly immaterial to a farmer whether there are two or a dozen elevator men in the town where he sells his grain, with this qualification: That there must be competition, for he is affected in that way. There must be competition so that the purchase of the grain by the elevator man will not become a monopoly.

You will hear the large shippers, the middlemen, remark frequently that they do not care anything about the amount of the rate, and neither do they, provided always that the rate is kept down so that the traffic will move. That is all they care for, and they make just as much money whether the rate is $1 or whether it is 80 cents, provided the traffic will move as freely under one rate as it will under the other. So that they are not interested in the rate, with that one solitary qualification.

But there are a class of people who are interested in that rate—the consumer and the original producer. Mr. Hines said that the consumer did not feel the high rate so much. That is true to a very large extent. You take a man on the plains of the West—a cattle raiser, who has a thousand head of cattle—he markets them in Chicago or New York; the rate may be ever so high. Perhaps a million human beings eat that beef, and the excessive rate is divided up to that extent. A load under which a single man will stagger two will carry with ease and ten will feel not at all.

But how is it with the producer who has the thousand head of cattle? All he has in the world is, perhaps, invested in his herd, and it is a matter of the most vital importance whether he pays 50 cents a hundred or whether it is 5 cents higher. He is the man that feels

the excessive rate. So I say that Mr. Hines is mistaken when he says that that is the most important feature of the statute. That it is important I do not deny, and I repeat that I would not in the least minimize the evil consequences flowing from the payment of rebates and drawbacks.

Let us examine the statute again. The first thing, the thing that stands at the head, affects the rate—"all rates shall be reasonable." That is at the top of the ladder, and the rebate is included in the second section. Well, that might not be of very much importance, but I must pass on from this with this further observation:

Our friend Hines says that this section, the second section, has not been enforced. While he does not say so in terms, inferentially he does say that the Commission has been derelict in its duty. Think for a moment. Congress enacted a statute that created offenses which before were not offenses. There are offenses denominated by the law as malum in se and malum prohibitum. Before Congress enacted this statute it was no violation of law to pay a rebate. Yesterday it was no offense; to-day it is made a penal offense punishable with a term in the penitentiary. I do not care what moralists may say in regard to those different kinds of offenses. They may dilate forever upon the enormity of the crime of paying rebates and drawbacks, but the generality of mankind never have regarded and never will regard it in the same light as they do crimes malum in se, such as murder and theft, acts which have been made crimes by the common consent of mankind through all time. I say it is different. We have met with that difficulty.

You take these railroad men. They might pay rebates, hundreds of them, and violate the law every day in the year. You would know it and their neighbors might all know it. But they do not lose caste. They would be invited to your homes and introduced to your families just the same as they were before. So that we have that difficulty, and any lawyer who has ever prosecuted crimes can corroborate what I say.

It was told here by Mr. Clements, the Nestor of the Commission, and perhaps who is as well acquainted with its inside history, its record history, as any member—he told you about these investigations where the evidence of the rebates was kept separate from the general records; it was a private matter, a private transaction—"on the side," as the boys sometimes say; and when the necessity for the use of the account of the private transaction had gone by the papers were all destroyed and no evidence left. What are you going to do when you run up against a proposition of that kind?

Mark you, I think it was not until 1897 or 1898 that the Commission could call upon a railroad official to testify before the Commission. There was no exemption, and you could not ask him to incriminate himself; he was entitled to the protection of the law.

These things have been gone into, so that, knowing these things as Mr. Hines did, and knowing, as he evidently did, the efforts that were put forth by the Commission to stop rebates, it was certainly very unkind in him to put forth the insinuations that he did.

Why harp upon one string all the time? Why the second section? It is simply because, as I have stated a moment ago, there is not a railroad man in the United States who would not stop paying rebates *if he could.* I am speaking now dispassionately about these things.

I was a railroad lawyer for many years, attorney for one of the principal railroads in my State, and I think I can look at this question both from the outside and the in. Of course they want to stop rebates.

Senator CULLOM. Why don't they?

Mr. FIFER. I will tell you why they don't. The trouble is that these traffic men know each other, not well enough, but too well. I do not want to disparage them now, but every mother's son of them is afraid, and refuses to trust the other fellow. That is the secret. Where one road seems to be getting more than its share of the traffic, they are so suspicious that they think the rates are being cut, and the first thing you know everybody is paying rebates and the tariffs are going to the demnition bowwows.

Senator CULLOM. What are you going to do about it?

Mr. FIFER. Well, I will say this: Do not think, gentlemen, that you can reform the world by making law through the ayes and noes of a legislative assembly. If you could, this would be a splendid world for honest people to live in. You never can prevent the commission of crime and you never can reform the world by the enactment of laws. The preacher and the school-teacher must do their share, while the lawmaker and the law prosecutor are holding crime in check as much as they may.

So far as the second section is concerned, it is universally admitted that never in the history of this country have rates been so well maintained as they are at this blessed moment, and have been for the past two or three years.

Senator CULLOM. By that do you mean that there has never been a time when the law was so well enforced?

Mr. FIFER. Well, my colleague, Judge Clements, told you about what was being done; that is a wide-open door, and it is no use for me again to travel over the same ground. That section has tended to hold the railroads in restraint. I believe that the best results do not always come by simply catching people who have committed crimes and sending them to the penitentiary. I believe the restraining influence that hangs over the heads of people follows from the fear that if they do wrong they are likely to get into trouble. I believe that that is the most beneficial part of any criminal statute. Of course there must be an attempt to enforce it—no doubt about that—because if it is utterly neglected nobody will have any respect for it.

So that I disagree with Mr. Hines when he says that the most important purpose that Congress had in view in enacting the law was found in the second section. That it is important, I admit; that it is the most important, I deny.

We all agree that if the second section is not strong enough to prevent rebates and drawbacks, make it stronger. The railroads say so, the Commission says so, the great shipping public says so.

Senator FORAKER. If I do not interrupt you——

Mr. FIFER. Not at all; ask me any question you desire.

Senator FORAKER. I understood you to say a moment ago that there never was a time when rates were so well enforced as they have been during the last two or three years. That followed immediately after your discussion of rebates. By that do you mean to have us understand that rebates are not now so much granted as heretofore?

Mr. FIFER. Undoubtedly that is true, Senator. While I am on that point I will further state that we have taken occasion, when traffic men have been before us—although it was irrelevant to the subject under inquiry—to ask questions, under the general powers delegated to the Commission, to inform ourselves whether they knew of any rebates being paid and whether rates were being maintained. Further, Senator, I believe that rates are now being maintained. What brought about that happy condition is due to several causes. I think, as was suggested by the Senator from Louisiana [Mr. Foster] yesterday—or perhaps it was the Senator from Nevada [Mr. Newlands]—that these are flush times, that railroads have an abundance of traffic, and that the inducement to cut rates does not now exist. I think there is a large share of truth in that. I think it is due somewhat, and very largely possibly, to the Elkins law, because that tied up some fourteen roads from departing from their rates and paying rebates. I think there is a general understanding among railroads that they will maintain rates. It is all these things combined. Of course I have no information in regard to that matter except as I can gather it from rate men and shippers. But I think if every traffic man in the United States were called before this committee and made to testify he would say here, as I have said, that there has scarcely ever been a time, certainly not in recent years, when rates were so well maintained as now, and that there are but few rebates paid.

Senator FORAKER. If we should have a recurrence to the practice of giving rebates, what, in your judgment, is the best remedy for that?

Mr. FIFER. I do not know that I can make any suggestion, Senator; I do not know how the second section could be made any stronger.

Senator FORAKER. I am referring now to the provision, found in the Elkins law, granting a remedy by injunction and requiring a summary proceeding in court, if it has jurisdiction, to stop rebates. What would you suggest, by way of amending the law, if the practice of giving rebates should again be resorted to?

Mr. FIFER. I do not believe, Senator, that I could make any suggestion. I would not say that the law could not, perhaps, be made more rigid and the way of the transgressor made a little more difficult. But yet I do not see now how I could make any suggestions in regard to that, except to provide for expert examinations of the books.

That disposes of the fifth and second sections; that is, the pooling and the rebate sections.

You will remember that at the close of the war, when the now historical peace conference occurred between President Lincoln and Alexander H. Stephens, Mr. Stephens is said to have asked Mr. Lincoln, "What terms are you willing to grant?" And it is reported that Mr. Lincoln replied, "If the South will consent to the abolition of slavery, they can write the other conditions." So, if the right of the railroads is reserved to them to make and control their own rates, they will consent, I take it, to about all the other conditions.

But I think you will find, gentlemen, that they will never consent to surrender the smallest fraction of that power. They will hold on to that like a lost sinner to the Rock of Ages. They will never let

go. And I expect, if I were a railroad man, I would take the same view. Not because these railroad men are any worse than anybody else. If you take all the people to-day in the United States who are complaining in regard to these matters, and let them change places with the railroad men, you would hear just as much complaint, perhaps. The individuals might change places, but the racket would keep on just the same.

Looking at it fairly, I know, and every reasonable man knows, that some of this talk about the injustice and the inequality of these tariffs and the conduct of railroads is unjustifiable and unreasonable. Much of it, too, rests on a good foundation.

There are two of those sections disposed of. What are the others?

The first, which says that rates shall not be unreasonable.

The third, that you shall not discriminate between localities.

And fourth, the long and short haul clause of the law.

Every one of those sections, if violated, requires what? It requires a change of rate. If any railroad man can think of any other way to correct a violation of either one of those sections (the first, third, or fourth), let him speak up now, or forever hold his peace. He can not do it. If the rate is too high, it must be cut down. If there is a discrimination between localities, one rate must be cut down a little or the other must be raised a little, and a proper relation of rates must be brought about.

As to the long and short haul clause, you can not correct the inequalities unless there is a change of rates. If you will examine into the question, you will find that a great deal of injustice is done in regard to inequalities between localities, excessive rates, and in the long and short haul clause.

Before I leave that I want to make this observation, since I am on the question now of rate making: The railroads have the right, in the first instance, to make their own rates, free and untrammeled, so far as any governmental influence or authority is concerned.

That leads to the inquiry, Is there no limitation upon the power of railroads, then, to make rates in this country? Can they charge just what they please? Certainly not. There are three limitations:

First, competition. Railroads, by combining, can do away with competition, except water competition. But there is competition in this country, both rail and water, and the majority of railroad rates in this country are made by competition, either of markets or by direct competition. That is one limitation upon their authority. What are the other two?

Another one is the commercial conditions. You will hear traffic men whirl that off their tongues as glibly as you please. What does it mean? We have heard this question over and over again, until it has become as familiar as the primer. What are commercial conditions? Suppose I own a thousand acres of timber down South that will make lumber. It will cost me $15 per thousand to manufacture that timber into lumber; the rate is $5 a thousand; the lumber in the market is worth $20. If I can not get a reduced rate I will allow that timber to rot in the forest, because it would be a silly farce for me to work for nothing and manufacture that timber into lumber. I go to a railroad man, explain to him the circumstances, and I say, "I can not manufacture this timber into lumber

unless you reduce your rate; if you will reduce that I will make business for you and I will make something out of it for myself." In order to move that lumber the railroad man must reduce his rate, and generally does, and makes something out of the transaction. That is an illustration of commercial conditions. That is two limitations.

The other limitation upon the power of railroads to make rates is what the traffic will bear.

Some traffic men will tell you that that is true and others will hedge a little on that. They do not like to come out flat-footed and admit that they charge as much as the traffic will bear. But they do, all the same. As Mr. Hines says, this is not a religious or moral question. It is a business question—that is, when these gentlemen come to make their rates they do not go into a closet and fall on their knees and ask divine guidance. Senator Ingalls, you know, once said about our pilgrim forefathers:

> First they fell upon their knees,
> And then upon the aborigines.

Now, Senator, consider our country out on those great prairies, those great oceans of fertility and beauty. Do you suppose that those railroad men ride over those prairies and take an inventory of those crops and say, "I dearly love these people and I intend to do by them as I would that others should do unto us?" Do they act upon that principle? I do not wish to be understood as saying that there is no commercial honesty in the world. I believe the world is growing better, and I think there is more commercial honesty now than ever before. I am an optimist, not a pessimist. But they do not, when they go to make rates, apply the Golden Rule; they apply David Harum's golden rule: "Do the other fellow before he can have time to do you."

Railroad men are just as good as others in regard to that; just as good as others. But business is conducted on that principle. Not that the commercial world is generally dishonest or in particular is dishonest. But every man is trying to get the best end of the bargain if he can, and if these railroad people can get the best end of the bargain they will do it.

Now, what next? I know that in reply to all that it is said—and the questions that have been asked by members of this committee indicate that—that the factory, the farm, and the railroad are all in partnership; that they lean each against the other and support each other; that their interests lie along the same channel. Gentlemen, that is true; up to a certain point it is entirely true. The railroad and the factory will go hand in hand up to a certain point, and that is the point where the factory can live, thrive, and flourish, and furnish at that point as much traffic for the railroad as it could under any other condition. The railroad is not going to strangle the factory. It will foster that industry as tenderly as a mother will her child; not for the same purpose—of love and affection—but for cold dollars, just for cold dollars, and that is incentive enough. When you reach the point where the factory can live, flourish, and furnish business for the railroad, the common interest of the railroads in the factory ceases. They will foster that industry not for a day, not for

a year, but for all time, so far as speaking from the business point of view is concerned.

Time was when wild-cat railroading was going on in the country. Then they would dart down on a small railroad like a hawk on a spring chicken and get away with as many feathers as they could, and they did not, undoubtedly, care whether the industry flourished or whether it failed. But that has long since gone by, and railroading is settling down rapidly now to legitimate business, and the railroads want to foster these industries. It is to their interest to do so, and that is why they want to.

Let me pursue this a little further. There is frequently a wide margin between the rate that will allow a farmer, a coal miner, or a factory man to live—a wide margin between that amount and the amount to which he is justly entitled. If the farmer makes 5 per cent on his investment he will not leave his farm, and he may be entitled to 10 per cent. The coal miner may, if he only makes 5 per cent, stick to his coal mine, and he may be entitled to 10; likewise with the factory. When it comes to that point the railroads hold the edge on the factory.

Senator DOLLIVER. What do you mean by that?

Mr. FIFER. I mean they have them in their power. The Senator never played cards, I take it. Excuse me. I did not recognize the fact, Senator, that perhaps you did not understand those terms.

The railroad has the power. Take it to yourselves, gentlemen. Will those engaged in any ordinary business exercise it for their own benefit, or will they divide the extra profit? I am not going to point out, or attempt to point out, to any great extent, what the committee ought to do or what it ought to recommend. It is easy to make complaints, it is easy to find fault, but it is the business of statesmen to apply the remedy.

Senator CULLOM. You are one of the Commissioners undertaking to execute the law that exists. You know whether there are faults in it, or places in it that ought to be strengthened.

Mr. FIFER. I will come to that, Senator, a little further on.

Senator KEAN. Before you pass from this question of rate making, you have told us how the railroads make rates. How would you make a rate?

Mr. FIFER. Of course it is a difficult question to make a rate. If the reasonableness of a rate were challenged, I know of no better way to test it, no better standard by which it shall be measured, than to take other rates throughout the country on the same product, under like circumstances and conditions, and find out if you can whether the rate by which you measure the challenged rate is a rate that is made by competition. If it is, and is a rate of long standing, you can not go very far wrong in establishing that. If there had been no railroads yesterday in this country, and to-day they were all dropped down on us just as they are, without any schedule of rates ever having existed, and you told all the traffic managers in the United States, "Now, come and make rates for these railroads," they would have a great big job. But that is not the case at all. These rates are of long standing. The railroads have been making rates for sixty or seventy-five years, and there are standards by which these rates are measured.

Take all the common law that it has taken a thousand years to build up, our constitutions, and our statutes. Wipe them all out, and then undertake to build up a system of laws—either by this body of men or any other—in a day, and you will find that you will have a great big job on hand. Constantly society and legislative bodies are fighting, so to speak, on the skirmish line. New questions are arising every day. You take old principles and apply them to new conditions, and society and government go on progressively from day to day. Now and then you encounter a new principle—the railroad, the telegraph, and the telephone—and all these questions have brought up new conditions. They raise new questions, and, so far as the courts can, they apply the old principles to the new conditions, as every judge or lawyer throughout the country knows.

So with rate making. There is a sort of fixedness about it that people understand. The shippers understand it. Everybody who has to do with shipments understands it.

Now, gentlemen, I have explained a condition without suggesting a remedy. I shall do that later on. Let us see further in regard to the actual condition of some of the rates. Glance your eye upon the map hanging upon the wall, and you will see that between the Rocky Mountains and the Atlantic seacoast that country is traversed by large navigable rivers—the Mississippi and the Ohio and their tributaries. You will see that the Great Lakes reach nearly halfway across the continent. That water communication has in all time, and will for all future time, modify, regulate, and control railroad rates throughout the great Mississippi Valley. I could explain, and it would be interesting, if you had time to listen, how one water rate will affect the rates over a large country.

Take the grain rate from Chicago. Generally, when navigation opens, the railroads put down their grain rates, by reason of water competition, 2½ cents on a hundred pounds. It was suggested here, I noticed, last week, I believe, as to where went this profit derived from the demoralization of freight rates. Gentlemen, from the best light I can get upon the subject, I believe that for the most part it goes to the producer. I know here recently, when we were examining witnesses in regard to the differentials between the four great North Atlantic seaports, Boston, New York, Philadelphia, and Baltimore, a few years ago there was a wretched demoralization of the grain rate from the West to the Atlantic seaboard, bringing it down to 7 cents a hundred, and I specifically inquired of the shippers and railroad men where that profit went. It was said the railroads were carrying at a loss. The grain men, the middlemen, said they made no more than when the rate was 17 or 20 cents. "Where did it go?" I inquired. They said that it went to the producer for the main part. The producers are the men planting corn in Illinois to-day. They are not here.

Senator FORAKER. Did you examine the market reports of that period to see whether or not there was any explanation in them as to what became of the profits on that grain?

Mr. FIFER. No.

Senator FORAKER. They would have told the tale conclusively, would they not?

Mr. FIFER. I did not examine the market quotations of that time.

This question was not really in issue, and I inquired about it for general information only. But this investigation gave the members the opportunity to inquire about this matter, to bring up that question.

Senator FORAKER. I am not disputing your proposition, but would not the market quotations for that time have told that tale conclusively?

Mr. FIFER. Yes; they would have told exactly; but this was only a collateral question.

Senator FORAKER. It seemed to me that those prices would show whether the producers got that profit or not.

Senator CULLOM. What was the date of that rate cutting when the rate was 7 cents?

Mr. FIFER. I do not know exactly when it was, Mr. Chairman—about four or five years ago.

Senator FORAKER. What was the date when the rates fell and when you investigated the subject of differentials as between Boston, New York, Philadelphia, and Baltimore?

Commissioner KNAPP. I think it was about the beginning of 1904, and related to ex-lake grain from Buffalo.

Senator FORAKER. He was not talking about any ex-lake grain.

Mr. FIFER. No, Mr. Chairman, you did not understand the inquiry. There was a rate war. The roads leading from Buffalo to New York insisted that they ought to share in what is called the ex-lake grain—that is, the grain that goes to Buffalo by water, and there had been a differential in favor of Baltimore and Philadelphia; but they got into a war and reduced the rate down to the fraction of a cent, outrageously; the rates were utterly demoralized.

Senator KEAN. You say that was in 1904?

Mr. FIFER. In 1904, but the demoralization of grain rates was previous to that. The testimony in that case will show.

I have shown you what there is on the east side of the Rocky Mountains. Now glance your eye to the Pacific coast, and you will see that there are no great rivers running from the interior to the coast; no lakes, except in the extreme northern portion perhaps.

Now, if you please, examine the railroad rates of what is called the Middle West and the Pacific coast. I am not good enough in remembering figures to run through that in my mind particularly, and I failed to make copies of them; but the tariffs are on file in our office and will show for themselves. To begin with, from the Missouri River to the Atlantic seaboard there is what is called a blanket or postage-stamp rate, so that a merchant going from San Francisco East to buy goods—it makes no difference whether he buys at Omaha or Chicago, Pittsburg or New York—his freight from the point where the goods are purchased is exactly the same to the Pacific terminal—Los Angeles, San Francisco, Portland, and Seattle. It is exactly the same. Now, it is just the reverse when you get on to the Pacific coast. I draw those comparisons in proof of my assertion that railroads, when they get a factory or an industry where it has no competition, when it is helpless, so to speak, they make the rate—and that is the only limitation—just exactly what the traffic will bear. I think those western mountain rates, so called, are too high. Now, I had our auditor examine some of them only a short time ago, and let us take the matter of window-shade cloth, just as an example. From New

York to Salt Lake City the rate is $2.30 per hundred. From New York City to San Francisco it is $1. You take cotton goods. From New York to San Francisco it is $1, and from New York to Salt Lake City it is just double, $2.

Senator FORAKER. Why is that?

Mr. FIFER. Well, I will tell you. It is a long story, but I need not tell it all.

Senator FORAKER. No; you can tell it in a word.

Mr. FIFER. That was affected by the water competition from New York, and unless the railroads make a rate at the Pacific coast terminals that will take the freight from the water and put it upon the rails, it will go by water, and they must meet the water competition at the Pacific coast terminals. They make a very plausible and, I will say, in many instances a very just argument in the advocacy of the lesser cost for a longer haul. I will say further that the railroad, in my judgment, could not get along in this country without that provision, without that elasticity.

Senator FORAKER. Then the low rate for the through haul is, I conclude, all right, in your judgment?

Mr. FIFER. They meet that, and certainly nobody can object to a low rate.

Senator FORAKER. They must either give the low rate or let the business go?

Mr. FIFER. Yes. I will explain that. They make this argument, for instance—and what I say in respect to this will apply to every other Pacific coast terminal. They say, for instance, we have a railroad running from Salt Lake on. We have what is known in railroad parlance as "fixed" charges, and they say that if we do not carry that freight and meet the water competition we can not carry it at all. That freight, in theory, is just the same—it is treated by the railroads exactly the same as if it all reached the Pacific coast by water or originated at that point, was manufactured there, and then comes east. That is the principle on which it is done. They say, further, that we can make a little something by hauling that freight to the terminal, and if we do not do it the water will take it there. The freight will go there at the reduced price, and they contend, therefore, that it is no discrimination to Salt Lake City, provided always that the rate to Salt Lake City is a reasonable rate. Now, that is their position.

Senator FORAKER. And you come back, then, to that question as to whether the rate to Salt Lake City is reasonable?

Mr. FIFER. Yes; you get back to that. Now, there is where the greatest stumbling block is for traffic men that I have found. It arises just there. There is no way of getting around it in the world, and it is this: They say they make a small profit, and they say by engaging in that traffic to the terminal they can get a little something, and therefore make even less on the other lines of their roads.

Senator FORAKER. That is, even less to Salt Lake City, keeping up your illustration?

Mr. FIFER. Yes; but if they would spread that rate all over the lines of their road they would soon be in chancery, and I think that is true.

Senator FORAKER. That is, you do think that a dollar rate, for in-

stance, for a long haul would not be a profitable rate, if that were spread over the whole system?

Mr. FIFER. I do not think so. I think they are right about that, but here comes the trouble for railroad traffic men, and I think they are the smartest men in the world. When we were investigating that water competition around the Horn, because we had that question up, they would explain it and make you see it so vividly that you could fairly hear the flapping of the sails as the vessels rounded Cape Horn. So that they can embellish those things. I do not dare say that they swear to what is not true. It does not lie in my mouth to come here and say that, and I do not, but they can make their side appear the best always, and here is a point that is always difficult for them to get around. If, for instance, you take the rate I have mentioned on window-shade cloth from New York to Salt Lake City—$2.30—carrying it 800 miles farther they charge only $1, and that dollar rate affords them a slight profit, is not their rate of $2.30 excessive to Salt Lake? That is the question.

Senator CULLOM. Does not that fact almost conclusively make it appear to be unreasonable to charge $2.30?

Mr. FIFER. Yes. Now, let us be fair about it. The men who build a city in the interior of a continent, in a mountainous district, can not expect to get as reasonable a rate as the men who build their city upon the shore of the sea. Anybody can see that, and yet, granting all that, do not the conditions which I have stated indicate that the rate upon these articles to Salt Lake City is excessive, illustrating my original proposition that the railroads impose such tariffs when they have a factory or an industry all in their power—just such tariff as the traffic will bear? Now, Mr. Hines in the course of his testimony said that he would ten times rather have an industry on his road where there was no competition than an industry at the end of his line where there was competition. Why would he rather have that? Turn it over and look at it. Simply because at the end of his road the rate would be fixed by competition. When it is a solitary industry on a single line of railroad and that railroad his, he will determine what the rate shall be, and that is why he would ten times prefer to have an industry on his road. He said he would foster it, and so he will.

Senator FORAKER. I want to ask you a question right there. Assuming, now, that the difference in the rate between San Francisco and Salt Lake City is conclusive, as Senator Cullom says, as showing that the rate to Salt Lake City is unreasonable, what would that be—a discrimination against Salt Lake City?

Mr. FIFER. No; an excessive rate to Salt Lake.

Senator FORAKER. And if so, have you or not a remedy, in your opinion, already?

Mr. FIFER. I was going to come to that later on; I was going to speak of that.

Senator FORAKER. I do not want to interrupt the course of your argument, but I want to know right now, when you reach that point—admitting that this higher rate to an intermediate point is a discrimination against that locality, being on the same line—have you not a complete remedy now under the Elkins law; or if it be on different lines and the rate is so high as to amount to a discrimina-

tion in favor of a locality on another line, have you not a remedy, or have you? I simply want the benefit of your opinion.

Mr. FIFER. I will say this much right now in regard to that: You take the long and short haul clause and you take the third provision, that there shall be no discrimination between localities. Now, it seems to me that both those provisions might apply to the situation.

Senator FORAKER. You, of course, agree with the construction of the long and short haul clause that the Interstate Commerce Commission has given to it and that the courts have given to it?

Mr. FIFER. Oh, I think perhaps I bow to the decision of the court and agree that the court is right.

Senator FORAKER. You do not bow; you are a part of the decision?

Mr. FIFER. Yes; but at the same time the legislature could have modified that long and short haul clause in this way: It now says that the railroad shall not charge more for a short haul than it does for a long haul over the same line of road in the same direction, where the shorter haul is included in the longer one, where the circumstances and conditions are substantially the same. Now, they could have made it still more favorable to the railroads, and said, "where there is the slightest competition." They have said, "where the circumstances and conditions are substantially the same." The view of the Commission has been overruled by the courts several times regarding this clause.

Senator FORAKER. Now, we want to get to the point of this whole controversy. The question is whether we are going to amend or supplement this law. Would you have us strike out of the long and short haul clause, that provision "under substantially similar circumstances and conditions," and make it an arbitrary, rigid rule, that there shall be more charged for the long haul, proportionately, than for the short haul?

Mr. FIFER. Just the exact limitation that ought to be placed there is not clear in my own mind.

Senator FORAKER. If we strike it out, transcontinental lines would go absolutely out of transcontinental business, would they not, so far as their long hauls are concerned?

Mr. FIFER. It would not do to apply it on the Pacific coast, because the water competition on that coast is a controlling factor. It would not do, but just what limitation——

Senator CULLOM. What limitation would you put upon the statute making it stronger against extravagant differences?

Mr. FIFER. I have thought if it was left to the Commission to say that they should examine into and permit this thing to be done——

Senator DOLLIVER. Didn't they do exactly that same thing when the Commission was first organized?

Mr. FIFER. I could not speak in reference to that, because I have only been on the Commission a short time.

Senator DOLLIVER. How is that, Judge Knapp? Did not the Commission entertain the petitions of a multitude of roads to be relieved of this short-haul provision?

Mr. Commissioner KNAPP. Broadly speaking, I think the carriers generally assumed that the fourth section imposed a limitation which they must either observe or get relief from under some other clause, and at least to avoid any risk, and, as a matter of prudence, they appear to have made very general applications for relief.

Senator DOLLIVER. What action did the Commission take on those applications?

Mr. Commissioner KNAPP. You will find that very fully set forth in the opinion delivered in what is known as the "Louisville and Nashville Case," in the early work of the Commission.

Senator FORAKER. You take the same position there that the courts take, do you not, that you would take into account the question of conditions?

Mr. Commissioner KNAPP. No; the courts have given a much more liberal and extensive meaning to the phrase "similar circumstances and conditions" than the Commission, I think.

Senator FORAKER. Which case is it that you refer to?

Mr. Commissioner KNAPP. It is in the first volume, in the first year.

Senator FORAKER. But I was speaking of recent decisions. In all your recent decisions you have followed the interpretation, of course, given by the courts?

Mr. Commissioner KNAPP. Oh, certainly; so that, if I may have a word, if I understand the law now, if in point of fact the circumstances and conditions at a long-distance point are substantially dissimilar, no matter for what reason, the fourth section does not apply.

Mr. FIFER. There was a gentleman who appeared here last week from Tennessee, a gentleman who so delightfully entertained and instructed us all in regard to the growth and development of the South, all brought about by the railroads. You remember his well-turned periods and his flashes of rhetoric—very eloquent indeed.

Senator FORAKER. There have been so many gentlemen of that kind before the committee recently that I do not recall him.

Mr. FIFER. This was one special gentleman who was from Tennessee. As the gentleman progressed he became more serious, and as he scurried up and down the gussets and seams of Hamilton's and Jefferson's old clothes and described the awful chasm toward which the country was tending—that is, Government ownership of railroads—I confess that the cold chills went up my spinal column, my teeth chattered, and my knees knocked together, as I seemed to stand on the awful brink of this awful precipice, and I looked around for some of those impoverished widows and orphans expecting every moment to be precipitated to the base of that abyss. Now, he said that he represented the entire South, as I remember his language, in this question.

Now, gentlemen, I beg you to remember that the South is a great big country, and if he were representing the whole South on this industrial or rate question he certainly must be a very busy man, and it was very kind in Judge Clements to give way until he could give his testimony. Let us examine and see whether the gentleman represents all the southern section on this rate question. Down on the northern limits of South Carolina, or the southern limits of North Carolina, is the city of Charlotte, of about 20,000 inhabitants. From New Orleans to what is known as the "Virginia cities"—Richmond, Lynchburg, and Norfolk—is, in round numbers, about 800 miles. Charlotte is about halfway, about half that distance. The people down there complained to the Commission of this state of facts—that on some articles of traffic from New Orleans to Charlotte the

rate is double what it is to the Virginia cities, twice the distance. There is no railroad competition. The Southern Railway and the Seaboard Air Line reach the same city, but they claimed that they were under the same control and the same management, and that competition was done away with. But that state of facts existed. Now, then, the other side of this case, the side of the railroads, is that they want to do business in the Virginia cities, and must meet the water competition that reaches the Virginia cities by the ocean—the same old question, but I call attention to this disparity now. Per ton per mile the rate to Charlotte is four times what it is to the Virginia cities per ton per mile. If they can do business at a slight profit, however slight, carrying the same goods right through Charlotte—I leave it to you—whether if they do business at a slight profit to the Virginia cities the intermediate rate is not too high.

Senator FORAKER. That is on the same line of road, is it?

Mr. FIFER. The same line of road, the Southern road. I don't know whether the Southern road reaches all the Virginia cities or not.

Senator FORAKER. How did that come to the attention of the Interstate Commerce Commission?

Mr. FIFER. It came to the attention of the Interstate Commerce Commission by complaint duly filed.

Senator CULLOM. Have you tried the case?

Mr. FIFER. The testimony has been heard, but no decision has been made. I would not like of course to express any opinion at this time. These facts I call attention to are public property now.

Senator FORAKER. Now, it was identically that sort of thing that we, after a great deal of consideration, undertook to provide for in the Elkins law where it provides in the third section that all discriminations of that character particularly might be enjoined, and it would be the duty of the court to proceed summarily, provided the Interstate Commerce Commission would make the complaint.

Mr. FIFER. Senator, you will find that is the most difficult thing, in my judgment, you will have to deal with when you undertake to crystallize all this talk into a bill. It is easy to talk; it is easy to find fault.

Senator FORAKER. What I want to find out is why did not the Interstate Commerce Commission, with this law before it and that complaint made out, institute a proceeding under this statute.

Mr. FIFER. Well, I thought I would speak of that in its proper place.

Senator FORAKER. I just want to get at the facts.

Mr. FIFER. My construction of the law is that the courts could do no more than the Commission could do.

Senator FORAKER. They could enjoin it, couldn't they?

Mr. FIFER. The courts could enjoin them from charging that rate.

Senator FORAKER. No; could enjoin the discrimination.

Mr. FIFER. Well, enjoin the discrimination. I have already pointed out that the violation of each one of these sections involves a rate, and while the court, if the rate is too high, may do as the Commission does, declare the rate too high and excessive, and may enjoin its enforcement, yet there it must stop.

Senator FORAKER. You take the view, do you, that the court has no right, even though you would seek to make that an issue, to enjoin anything in excess of what was a reasonable rate, which the law says shall be the lawful rate?

Mr. FIFER. Yes; the court might enjoin the rate that is in, but I do not believe that the court can ever substitute one rate for another.

Senator FORAKER. Nobody ever contended that any court could. That never was thought of, as I understand it, by anybody; but there is a difference of opinion, and I only want to know whether you as a lawyer believe that it is not competent for a court of equity to enjoin anything which you allege to be in excess of a reasonable rate, if they found your allegation had been sustained by the proof.

Mr. FIFER. The decision in what we call the Wichita Case would indicate that a court would enjoin unjust or undue discrimination, and that the court would enjoin an excessive rate. The court, in other words, could do just what the Commission does, and no more, and if you leave the Commission and go to the court you are traveling in a circle and reach the same point from which you started.

Senator FORAKER. Is there not this difference: The Commission can condemn and that is all they can do; but the court can at once enjoin not only the collection of the rate which may be unreasonable, but the collection of any rate which is in excess of the lawful rate?

Mr. FIFER. Yes; but who is to determine what the reasonable rate will be?

Senator FORAKER. The court. Is there any trouble about that as a proposition of law?

Mr. FIFER. I think there is a great deal of trouble.

Senator FORAKER. I would like to have some lawyer point it out.

Mr. FIFER. There is a trial, we will say, in your State court before a jury. The jury renders excessive damages, and you take the case to the appellate court. The court may reverse it solely on account of the excessive damages. Can the court fix what the verdict ought to be?

Senator FORAKER. Well, it is not an analogous case, because the interstate-commerce act says that a railroad may charge a reasonable rate and that it shall not charge any more. In other words, a reasonable rate is a lawful rate and anything in excess of a reasonable rate is unlawful. Now, suppose they charge $1.25 where they should charge $1. The question is not whether $1.25 is unreasonable, unless the pleader raises only that issue; it is certainly competent for him to raise the issue whether anything in excess of $1 is unreasonable and because if $1 be the maximum reasonable rate that is the rate prescribed by the statute. The court can enjoin that on a state of facts presented, but of course if to-morrow the conditions change, that injunction would not be binding under changed conditions, though a railroad would not be very likely to violate what the court had found.

Mr. FIFER. What kind of a decree would you enroll? Enjoin the excessive rate, of course. To go further and enjoin an unreasonable rate as unlawful without naming the unreasonable rate you would condemn what the statute already condemns, and the question is still left open as to what a reasonable rate is. If you fix that, then it is the fixing of a rate by the court. But lawyers perhaps will differ in

regard to the duties and power and the rights of courts in that particular. I expect you and I differ in respect to that.

Senator FORAKER. I hear a great discussion of the right of a court to fix a rate, which is simply striking at a man of straw. I never heard anybody propose to have rates fixed by a court.

Mr. FIFER. I understood from some inquiries here yesterday it was supposed that the court, in saying that a rate was too high, by that simple mental operation must of necessity decide what was a reasonable rate and might suggest it. I think you asked that question yourself.

Senator FORAKER. I perhaps did. I am only trying to get your view now.

Mr. FIFER. My view is this, that the rate-making power is the exercise of a legislative power.

Senator FORAKER. Yes; we are all agreed upon that.

Mr. FIFER. That you can confer that power upon some administrative body, but you can not confer it upon the courts; that you can not confer a little power upon the courts any more than you can confer a big power; that the size of the dose does not change the quality of the medicine. If you can confer a little power to fix rates, you can confer upon the courts the power to make the entire schedule.

Senator FORAKER. Well, we will agree you can not confer any. I wanted simply to get the benefit of your legal opinion, and it is important because you are a member of the Commission and a lawyer of experience.

Senator CULLOM. I want to follow that inquiry of Senator Foraker's a little further. As I understand it, you do agree that a judge, a court, if an application is made to it for an injunction under the Elkins law, may grant the injunction.

Mr. FIFER. Yes.

Senator CULLOM. And by that declare that the common carrier shall not charge that rate any longer?

Mr. FIFER. Yes.

Senator CULLOM. Now, then, what is the result? If they do business, they have to put down the rate.

Mr. FIFER. Yes.

Senator CULLOM. Well, that is what we want.

Mr. FIFER. Just the power that the Commission can exercise, and that is what I say. You are traveling in a circle and you do not get anywhere.

Senator CULLOM. The Commission does not need to exercise any power at all except to make application to the court for that injunction.

Mr. FIFER. That is all true. I think we understand one another, but while we are on that I want to note another point, and that is that our railroad friends say that they do not want the Commission to lay its ignorant hands upon their freight rates—that they want men of experience—and yet they say that they want to go to the courts. Are you going to turn all the lawyers off the bench and put on railroad men? Who is to have the final say about this? It is the courts. Well, are they lawyers?

Now, there is this further physical difficulty in regard to the courts, I am trying to aid you, gentlemen, if I can, to a proper solution of this difficulty.

Senator FORAKER. You have to go to the court eventually.

Mr. FIFER. You have to go to the court eventually, and you must go before a body of men who are not railroad experts, and there is where these railroad men say you ought to go in the first place.

Senator FORAKER. If they have the final say, why not?

Mr. FIFER. Well, that is the question. Now, you see the truth of it is these railroad experts do fix their own rates in the first instance, and I say it with all due respect to the courts, they do not like to dig through this kind of cases. They are lacking somewhat in the technical experience. It is a pleasure for a good lawyer to pass upon a clean-cut question of law, without all this physical labor of running through large records of 20,000 pages, as we sometimes have. We have one case now where the evidence is taken and it is to be argued on the 25th day of May, where there are 20,000 pages of testimony. Now, we did not bring this lawsuit. It was the cattlemen of the Southwest who brought it, and all their testimony had some bearing on the question. We had to hear it.

Now, think of hurling a volume of testimony of that kind at a supreme court or a circuit court or a district court. How much consideration, with all due respect to the court, would it give? It must be a body of men who are in and with and of this question, studying it day by day and knowing something about it, in my judgment. Now, there is another difficulty, which is purely physical, and that is you would have to make a traveling menagerie of these courts. In this cattle case we took testimony at Fort Worth, Chicago, St. Louis, and Denver. Would you have the courts travel around? That is a necessity, because a lot of merchants from different cities are all interested in the same rate. They are busy men. Our law provides that the Commission can go to the place where the complaint is made and take the testimony. Now, to bring up a perfect cohort of witnesses from Denver to Washington and from St. Louis and Chicago and Fort Worth would be a substantial denial of justice. You must go where this testimony is to be found and where the men live.

Now, there is that further difficulty in regard to submitting this question entirely to a court.

Senator CULLOM. I understand from the general tenor of your remarks that you believe that this Commission or a commission ought to have this power extended, so that when it finds a rate is unreasonable it can find what is a reasonable rate.

Mr. FIFER. I will answer that in this way, that I stand with the President—his message has been discussed here, and in that connection I want to say this: I do not agree with our railroad friends that if the Commission was given this power to fix what is a reasonable rate it would turn the world upside down. I think that the earth would continue to turn on its axis and the sun would rise and set as of yore, and these gentlemen would do business at the old stand, with perhaps some little fear of doing anything that might call down on their heads the condemnation of the Commission. Now, I

believe that the mere fact that the power exists in some body of men to regulate rates will make the railroads more cautious and more careful than they otherwise would be. The man who is whipped the easiest is generally whipped the oftenest; and so if there is no power, and the railroads can run over the Commission, they will continue to run over them. If the power exists, it would not be necessary to exercise it, in my judgment, very often. When these traffic associations met and formulated rates—and I do not know but what they ought to be legalized in some way, because they do it anyhow—they would say, "Here, we had better not raise that rate; if we do, we will get into trouble with the Interstate Commerce Commission," and I believe that that would prevent the raising of many rates. Now, just pursuing that a step further. You have heard very often from our railroad friends that they lower many rates, and yet they say the lowering of a rate will demoralize business. They have lowered hundreds of rates in recent years. I suppose they lowered them because they were too high. They did not lower them for any other reason. Suppose a complaint had been made and the Commission had condemned the rate and lowered it, would not the effect have been exactly the same?

Senator KEAN. Would not the Commission also have the power to raise the rate if they condemned the rate?

Mr. FIFER. I am glad to have my attention called to that. When it comes to adjusting rates between localities, in my judgment the power should be given to the Commission to lower one rate and to raise another, so that they can be brought to where they are just.

Senator FORAKER. That is, you think they should have the right to fix a minimum as well as a maximum.

Mr. FIFER. I think, generally, it would be better to fix a maximum rate and give elasticity as much as possible to the rate. Mr. Hines had much to say about elasticity—the more the better. He wanted that kind of elasticity, I suppose, we used to get with an old pair of yarn suspenders, that drew up and let out as occasion required, with a few buttonholes in front for extraordinary occasions when there was undue expansion. Now, gentlemen, look at that a moment. Expansion! His argument there proceeds upon the theory that the Commission was to make the rates in the first instance. Why, not at all. He called attention to these very experienced men running all over the country and up and down the railroads feeling the commercial pulse, and finding out just what ought to be done. Do you suppose that if this power was in the Commission these men would be discharged? They would be of just as much use after the power was granted as before, and they would make the same rates then as they do to-day—just exactly the same.

Senator FORAKER. May I ask you, before you get too far away from it, whether the Interstate Commerce Commission has yet decided the question raised by the complaint of the cattlemen?

Mr. FIFER. No; that is to be argued on the 25th of May.

Senator FORAKER. How long since that complaint was filed with the Commission?

Mr. FIFER. I do not know exactly. It was by attorneys hired by the cattlemen.

Senator FORAKER. It was three or four years ago?

Mr. FIFER. No.

Senator FORAKER. It has been long enough ago to take 20,000 pages of testimony.

Mr. FIFER. Yes; with the exhibits. The attorney for the cattle raisers, Mr. Cowan, I believe, is here.

Mr. COWAN. The case was begun in February of last year and the evidence was concluded in December. If I have an opportunity of appearing before the committee, I shall refer to that.

Mr. FIFER. Our worthy friends have not only complained of us because we have not made good citizens out of them by injunction, but they have also complained because we have not tried these civil cases fast enough.

Senator FORAKER. I do not want you to think there is any complaint involved in that question I asked. I am only thinking about the feasibility, and using your own case as an illustration.

Mr. FIFER. Oh, yes. Wherever there has been these long delays, so far as I can remember now, it has been the fault of the attorneys themselves.

Senator FORAKER. Doubtless not the fault of the Commission. We all recognize that.

Mr. FIFER. No; it is not. I do not know an anstance where the Commission has ever continued a case or failed to go to a place and hear it—some one of us—whenever the parties were ready. Now, you take the Soap Case; that arose from your own State. That was represented by some of the best lawyers from Cincinnati for the complainants, and we hurried through as fast as we could. We took great volumes of testimony.

Senator FORAKER. I have not heard anybody complain of the Commission.

Mr. FIFER. Mr. Hines cited that particular case. The complainants are not here complaining, and the railroads come here and, in a measure, complain that there has been too much delay. I believe Professor Meyer—I did not read one word of his testimony—came here all the way from Chicago to talk about the Commission in regard to that. I am very sorry that he thought it was necessary to do that. There are many kinds of professors in the world—professors who have a large grasp of practical affairs, and there are professors again who fall within that class described by Macaulay, laborious pedants, who infest large libraries, spending most of their time in learning the wrong thing. I do not know to what class Professor Meyer belongs.

Senator FORAKER. Well, we have had two professors here.

Mr. FIFER. That is one more than I had heard of.

Senator FORAKER. It should be said in behalf of Professor Meyer, now that you speak of him as you do, that he came here on the invitation of the chairman of the committee and without any compensation from anybody, and refused to accept even his expenses.

Mr. FIFER. I do not abuse Professor Meyer at all.

Senator FORAKER. It was purely an act of philanthropy on his part.

Mr. FIFER. I am very glad that he came. For one, I want all the light on this subject that is within the reach of the committee.

Senator NEWLANDS. I understand that the complaint of the rail-

way men is not regarding the delay of the Commission itself, but they assert that these delays are an inseparable part of the system; that it is impossible for the Commission to act with the rapidity that is desired, the rapidity of judgment that is desired; that these traffic men with their numerous assistants are watching the commercial conditions all the time and are able to act quickly and decisively, and that it is important for the commercial interests that the decisions should be quick and decisive. It is the system that they object to as necessarily involving delay. I do not understand that they complain of the Commissioners themselves in that regard.

Mr. FIFER. Now, gentlemen, one further thought, and I have done. Our eloquent friend from Tennessee, to whom I have before referred, pictured the dangers of Government ownership by granting this power to the Commission. Now, in my judgment the road to Government ownership does not lie in that direction at all. It does not lie in that direction at all in my judgment, but the reverse. Government ownership in my judgment will come, if it ever does at all—and I pray that it never may—when the people of this country get the notion into their heads that these railroad corporations are too strong for the Interstate Commerce Commission, are too strong for the courts, aye, too strong for the Government. Now, that may come sooner than we think. We have heard the mutterings, and I am no alarmist, I am no Jefferson man, I have always been a Hamilton man, and I am no alarmist. I believe this Government ultimately will take care of itself, and is strong enough to do so, but we have heard the mutterings in the great city by the Lakes, and in my own town of 25,000 inhabitants there was a vote upon that question this spring, and although every newspaper was against it, yet it voted for municipal ownership of public utilities by two to one.

Senator FORAKER. Still you would do what is right, wouldn't you?

Mr. FIFER. Yes, exactly; and let the consequences take care of themselves. The railroads are cutting out their very sharp curves, and it is good railroad policy, and they have been cutting down the heavy grades. Now, instead of working overtime on this widow and orphan argument, I would set those men to work and I would cut out some of these heavy grades in these tariffs and I would take some of these sharp curves out.

Senator KEAN. That is what they are doing—taking the grades and curves off.

Mr. FIFER. Yes; that is, the physical curves, but I would take them out of the tariffs, and I say this in all good part as to what I would do if I were a railroad man. As long as these situations exist over the country, it is like a thorn in the foot; it will never down until the thorn is removed. It is a festering sore, and I believe—I am hopeful—I believe that the time will come when this everlasting conflict that is going on between the railroads on the one side and the people on the other will stop. I believe that it will find repose in just laws justly administered, and when that is done there will be a better understanding. I believe that we are passing through, and have been, a transition period in this country so far as railroads are concerned. I think we are a little different from what they are in Europe.

We are running a foot race to get on in the world and get the dollar, and each railroad man wants to be the biggest railroad man. I think that we will pass through that by and by and the railroads will settle down to where there will be less antagonism. I admire wonderfully Mr. James J. Hill. I admire Mr. Cassatt, and I admire Mr. Fish, of the Illinois Central. They are all in a measure benefactors. If I had their money, I would not invest it in boring holes through the Rocky Mountains; I would go off to Europe, I think, and have a good time—quit business; but they have the pluck and the nerve to develop these great industries. They do not do it for charity; they want to measure their prowess and their genius with the genius and ability of others, and they become great benefactors. There is Mr. Fish, who took various roads throughout the South. He galvanized them and breathed the breath of life into them, and has made a great railroad system, and so has Mr. Hill. When he went to the Pacific coast he might have lost every cent he put into it. I would have said so. I would not have done it. I say, All hail to these men! and I would not lay a straw in their way. I say they are benefactors, and I know of nobody who is doing more for this country than these great captains of industry, the railroad men, but they should not impose on the public.

I have often thought that I would rather be a railroad president than to hold any other position on earth. Senator Cullom will perhaps remember that in our town some years ago Bishop Spaulding, of Peoria, came over there and delivered a wonderfully brilliant and eloquent lecture. We have a sort of an eccentric in our town who imagined that he was something of a littérateur. He went out to hear the Bishop, and in going away with a friend he said: "Do you know if I had my life to live over again I would be a bishop?" Now, gentlemen, if I had my life to live over again I would be president of some great railroad company. I have a great admiration for them. They have done wonders for this country. The railroads should be fairly treated, and I am willing to concede that much of this talk is unfounded and unjust. We must view these questions not as partisans, not as railroad wreckers, but as fair men looking on both sides of the question, and that I believe I am able to do; but in order to allay this constant friction that has been going on for years and which is increasing, there must come about in some way a better understanding between the people on the one side and the railroads on the other, and that can be done by fair dealing.

Senator FORAKER. Do you think this friction is increasing?

Mr. FIFER. Well, I don't know whether it is or not, but I think it is at this time.

Senator FORAKER. Is it not true that there is less friction to-day between the shippers and the public and the railroads than ever before in the history of railroads in this country?

Mr. FIFER. I hope that is true; and possibly, Senator, you may be right about it.

Senator FORAKER. I ask to get your opinion.

Mr. FIFER. It is not being allayed very fast. It is not disappearing very rapidly, and it is still, I might say, a diabolical fact. It is with us.

Senator KEAN. Won't it always be with you?

Mr. FIFER. No; I think not. I think it will come about as it is in Europe to-day. I have not had time to read it, but I understand that the people over there have no such feeling against the railroads as they have here. You can take a personal-injury case before a jury and get just as fair a trial as you can where the controversy is between two individuals. That kind of feeling to which I refer does not exist at all. I think, possibly, it is because there is some sort of regulation, and the railroads have acquiesced, and for that reason it has largely disappeared. That is my own opinion.

Senator FORAKER. Do you think the railroads have an advantage before American juries in personal-injury cases?

Mr. FIFER. Not at all.

Senator FORAKER. Just the reverse, is it not?

Mr. FIFER. To some extent. I have tried that question to my sorrow many, many times. And I think that is the general experience.

Now, gentlemen, that is my say. I have given you the experience of one who has had only a few years on the Commission. I may be mistaken. I think in the main I am correct.

Senator FORAKER. You told us of two instances in which you thought excessive rates were charged, both to intermediate points, one to Salt Lake City and the other to Charlotte. Now, what would you do in those cases if we were to give you the power? I would like to see how these things would work.

Mr. FIFER. As far as the Charlotte case is concerned, I would not like to discuss that further. I have told the circumstances, which now are public record. We have to pass on that question soon. In the other I do not know. The Rocky Mountain or western mountain situation must all be tried together. It is a large question; you can not single out any railroad running to any Pacific coast terminal and try that case. What affects one affects all the transcontinental roads, and it would be very unfair to try one situation without bringing them all in.

Senator FORAKER. Well, I did not want to have you testify any further about that matter. Inasmuch as you cited those situations I thought you had something clearly in your mind as to what you would do to remedy those troubles.

Mr. FIFER. Now, we have been talking about investigating that whole western mountain situation. Bring in all the roads and let them all be heard.

Senator FORAKER. You do know that you would not raise the rate, as I understand you, on the through haul to the Pacific coast?

Mr. FIFER. No, sir.

Senator FORAKER. You would have to leave that as it is or else drive the railroads out of that business?

Mr. FIFER. Yes; that is right.

Senator FORAKER. Then you would have to reduce the rate to Salt Lake City?

Mr. FIFER. That would appear to be true.

Senator FORAKER. If you were to set out to do that, you would have to determine upon the facts adduced whether or not that was an unreasonable rate under all the circumstances?

Mr. FIFER. Under the first section, but not under the fourth.

Senator FORAKER. If it was reasonable, it would stand.

Mr. FIFER. Yes; that is the situation exactly.

Senator FORAKER. If we have any remedy for that, you are not aware of it, as I understand?

Mr. FIFER. I want to add in closing that I do not believe, except in some instances where I have stated, that the railroad rates throughout this country are excessively high at all. I have never believed that, and neither do I believe there would be or ought to be any great disturbance of these rates, whatever powers the Commission might be invested with.

Senator FORAKER. As a matter of fact, it is true, is it not, that rates by themselves, rates in the absolute are not unreasonably high?

Mr. FIFER. I believe that is true with some exceptions.

Senator FORAKER. There may be some exceptions, of course, to the rule?

Mr. FIFER. Yes; I think so.

Senator FORAKER. And if there is not any remedy against that, that is adequate, one should be provided, I suppose, would be your opinion?

Mr. FIFER. Yes.

Senator FORAKER. That disposes of the rate question. Then as to the rebates, you state, as I understand you, that they are practically discontinued, and, if not, there is all the law you can think of necessary to enforce the discontinuance of them.

Mr. FIFER. I can not think of anything else. However, I would say this: This escaped me when we were on that subject before. If you would delegate some power to the Commission to have a skilled accountant to examine the books, I think that that would be a very material help.

Senator FORAKER. Have a sort of power of visitation?

Mr. FIFER. A power of visitation; that is, by an expert. I could not, nor could you, go into those books and find out anything about them in the rest of my lifetime.

Senator FORAKER. Something like a bank examiner?

Mr. FIFER. We must have somebody of skill. There is one thing further that I think the committee ought to consider, and that is in regard to export rates. Mr. Hill came here, I am very sorry to understand, and abused the Commission, and said in substance that the action of the Commission had prevented him from sending flour to the Orient.

Senator FORAKER. I do not think Mr. Hill abused the Commission, if you will allow me to interrupt you there. He simply said the Commission required, in accordance with the provisions of the law, that he should publish his rates.

Mr. FIFER. No; I will tell you about that. I do not think that Mr. Hill has ever been trammeled in his export rates in the slightest particular by any action of the Commission. I think that the law is as the Commission has decided, that those rates must be published along with the other schedules. I have always been in favor of an emergency tariff on export rates—for instance, a great deal of these sales to the Orient are made by cable. They telegraph to Chicago or to Pittsburg for steel goods or for canned goods, and they have also

the bid from some place in Europe where they have water communication, and the man here can fill the order if he can get a reasonable internal rail rate. If he publishes his schedules, he can not change his schedules in time to take the order, and therefore he will lose it.

Now, it is not discrimination against the American producer, or not much at least, to have an elastic export tariff that can be done away with in special emergencies, because it is a question whether the American producer shall fill a foreign order or whether he shall not. Now, we called all the railroads together and the shippers, something over a year ago, and heard all of their complaints. Some of the roads were in favor of publishing the export tariff and others were not, and some of the shippers were and others were not; but we decided that the law was that it must be published, and said that we would not enforce it, however, until the railroads had had an opportunity to lay the whole matter before Congress and get relief. I think, gentlemen, you ought to give us some legislation on that question.

Senator FORAKER. Under the law as it now stands the Commission has the power to waive that requirement about the publication of through rates on export business, I believe, has it not?

Mr. FIFER. Oh, I think not. Now, if the committee will indulge me, before I answer any questions which they may desire to put to me, I would like to crystallize all these things that I have been saying into some concrete, definite form. First, I stand with the President in regard to granting power to the Interstate Commerce Commission to fix what a reasonable rate should be after an investigation.

Senator DOLLIVER. Now, do you apply that to the question of rates that are unreasonable in themselves or do you apply it also to these discriminations?

Mr. FIFER. I do not see why it should not be applied to discriminations between localities. As I said earlier in my statement, I do not see if there is a discrimination such as there was in what we called the "Wichita case"—that is, they charged from St. Louis to Wichita a higher rate for a shorter haul over the lines of the same company than they did to Omaha, a longer distance. I do not know how you are going to correct that inequality unless you lay your hands on the rates. I believe that when you determine that a rate is unreasonable when it is charged, and you hear all the evidence and the arguments, when you find that the rate is too high, somehow in some way by the same mental operation you find what a reasonable rate should be.

Senator KEAN. If you find that it is too low, what would you do?

Mr. FIFER. Well, that would hardly ever be the case, and the sole question is as to whether or not the rate is reasonable. I think we can rely upon our railroad friends to fix their rates high enough. I do not think that we need trouble ourselves about that. They will take care of that.

Senator KEAN. Do you think a 7-cent rate on grain to New York was too low?

Mr. FIFER. Decidedly too low. It was a ruinous rate. Perhaps it might pay operating expenses, and yet I doubt that. Certainly, every road in the United States, if all their rates were fixed at that standard, would be in chancery.

Senator KEAN. Suppose that New York was complaining as against New Orleans, that they had too low a rate, how would you arrange that?

Mr. FIFER. That is over different lines. This discrimination between localities is generally over a single line. We have that trouble in regard to the import rates, of which you heard from Judge Clements on the rate from Antwerp on plate glass to Chicago. The rate is 40 cents, whereas from Boston it is 50 cents. The Gulf ports wanted to participate in that traffic from Antwerp. The vessels that go to the Gulf ports are largely tramp vessels going around the world. They are not regular lines of steamers, and they bring but little import traffic and frequently it happens that wheat is carried over and back across the ocean several times, simply for ballast. It is frequently the case that these vessels pay a certain amount for sand, as ballast, if they have not freight enough to put in the holds of their ships.

Those vessels that serve the Gulf ports might bring that glass for ballast, and, therefore, could bring it for nothing. Mr. Fish wanted to participate in that traffic, and he made a rate of 32 cents. He had a right to do so. I do not know that we ought ever to say that he should not. That is the competition between markets, and that is the great regulator of rates in this country. For instance, the man from the North Atlantic seaboard meets a man from the Gulf in the grain markets of Kansas City, say, and they begin to bid against each other for grain, and what they can bid depends upon the rail rate so that brings these railroads into competition with each other. Now, strange to say, the Mississippi River from the grain fields of the West to the Gulf regulates the grain rates to the East over these freight lines. That seems strange, and how is it brought about? Mr. Fish's road parallels the Mississippi from Cairo to New Orleans. Now, he must make a rate that will take that traffic from the water and put it upon the rails, and the man from New Orleans meets a man in Kansas City or St. Louis to purchase grain. There is a water rate that is fixed by the Mississippi River to tide water. The Mississippi River fixes it. It also fixes the rate for the Atlantic seaboard. If the Atlantic seaboard wants to get that grain, they must give a rate that is substantially the rate fixed by Mr. Fish. So there you have what is called on wide fields a competition between markets. As I said, I do not believe that granting that power to the Commission would upturn these rates as much as our railroad friends imagine that it would, and I doubt if we would ever be called upon to exercise the authority that would be delegated very often, because simply the fact that the power exists would cause these men when they met in conference as they do, to not go so fast. It would be a restraining force. They would say we had better go slow about this, we had better use moderation; if we do not and fix these rates too high the Commission will be after us and we will have trouble.

It is said, however, by Mr. Hines that the courts would never disturb a rate fixed by the Commission unless it was confiscatory: that they could not do so. I do not think that is true if you simply delegate that power, but suppose you insert a little provision in the law saying that the courts when applied to should, on the evidence presented, have a right to pass upon that question of fact, just the same

as the Commission. I think they would do so anyhow, but suppose you did that; it would obviate all the objections urged by Mr. Hines, and his argument goes to the ground.

Now, then, further, I would take away from the Commission this executive power. The railroads complain, and I think justly, that they do not like to go into a police headquarters and try their civil rights, and I think that power should be taken away from the Commission and conferred upon some other tribunal. I think if this remains with the Commission or you create another commission for that purpose you should delegate to that body or this body, if we continue to exercise that power, the right of investigation by skilled experts. I believe that was suggested by Mr. Hines, and I think there would be no trouble about that, because I believe that these railroads want to stop these rebates as much as they can. It is natural to suppose that they should, and I think that that would be a great aid in preventing these rebates for the future.

I believe there are rebates paid now, and possibly there will be as long as there are railroads. You can not stop all crime, I do not care what law you have. There is not a city, there is not a town, or a village throughout the length and breadth of this land where the law is not violated in some way every twenty-four hours. You can drive it to cover, you can restrain it, you can minimize it, but you can not wholly prevent it, and so with the exercise of this power.

Now, I would provide for a court. I would provide for a court, and it seems to me that the better plan would be to restrict the jurisdiction of that court exclusively to the trial of these cases, although I am not clear in regard to that proposition. You might make some such provision as the Esch-Townsend bill contained and adopt it.

Senator CULLOM. Well, you say you would provide for a court. Do you mean that that court should simply listen to and try cases sent to it by the Commission, or after the Commission had made a finding?

Mr. FIFER. Yes, I think so. You might delegate to that court the powers that are exercised by the courts now, the power of injunction. We have some fourteen railroads tied up already by injunction, and you might confer upon that court that power. That might be a good thing; and in regard to export rates I think there ought to be some amendment of the law and rigid regulation in regard to import rates; but so far as export rates are concerned, I think the widest latitude ought to be permitted, perhaps to have some tariff, but to provide also for what might be called an emergency tariff, so that it could be changed quickly, and when our manufacturers and producers received a cable for a large order of goods and the same purchaser had a bid from perhaps some of the countries of Europe for the same order, there ought to be some arrangement made for an emergency tariff. I think it would help very greatly. I did not read Mr. Hill's testimony, but I have no doubt from the expressions that I have heard from railroad men that that would be a most excellent provision. Now, I do not know what other amendments you could make to this law.

Senator CULLOM. If I understand you, you propose that the law should be amended so that you not only on complaints could determine

whether a rate was reasonable, but if you found it to be unreasonable you could determine what rate would be reasonable?

Mr. FIFER. What rate would be reasonable.

Senator CULLOM. And to make an order accordingly?

Mr. FIFER. Yes.

Senator KEAN. Whether a higher or lower rate.

Mr. FIFER. Well, as I said a moment ago, I think the railroad traffic men will take care of the maximum.

Senator KEAN. That is not the question. You are going to decide a complaint that is made, and you are to decide whether that rate is reasonable or unreasonable.

Mr. FIFER. Who would bring a complaint of that kind? Certainly not the shipper; and the railroad would not bring it, because the railroad has the right to make it in advance.

Senator KEAN. But you have to decide whether this thing is fair or not.

Senator FORAKER. Suppose you have two localities, on different lines, and complaint is made that one locality has a rate that is discriminatory as against it as compared with the other, and suppose the defense would be by that road that that is only a reasonable rate and you would find it reasonable, you would have to find the other was unreasonably low?

Mr. FIFER. Then you would destroy the competition of markets. That would be the danger about that.

Senator FORAKER. And that would not be a good thing to do?

Mr. FIFER. I think it would not.

Senator FORAKER. This rivalry between localities is one of the best kinds of competition that we have, is it not?

Mr. FIFER. Oh, most certainly.

Senator FORAKER. And you would not believe in giving to the Commission the right to fix a minimum rate below which one locality in the case heard might not go?

Mr. FIFER. I doubt the propriety of that for the reasons I stated, that it would tend to destroy the competition between markets, which is certainly a great regulator of rates.

Senator FORAKER. If you found one rate was unreasonably high and you were to require it to be reduced, and it were reduced, the same discrimination could be practiced by dropping the other rate so as to keep the difference?

Mr. FIFER. That could be done, yes, sir. I do not believe, however, that the railroads themselves would ever consent to that.

Senator FORAKER. And you do not think it would be a good thing for the country, do you?

Mr. FIFER. I do not. You take the great Mississippi Valley. The traffic is going to the Gulf. That is the natural outlet, and they would not want to have their natural rights and advantages taken away.

Senator FORAKER. Now, if you take away from this subject the question of rates as you take away the question of rebates and discrimination between localities, what is there left except discrimination in commodities and private car lines and terminal charges for us to consider?

Mr. FIFER. Well, that is about all.

Senator FORAKER. It comes down to within pretty narrow limits?

Mr. FIFER. Yes.

Senator NEWLANDS. There is more complaint about discrimination between localities than any other, is there not?

Mr. FIFER. Yes; there is a great deal of complaint in regard to that, and that is one of the most difficult questions we have to deal with.

Senator FORAKER. If you grant a complaint in a given case the other locality is likely to complain as against that which has been remedied?

Mr. FIFER. Yes; and that is liable to force on a rate war. You take the competition between the North Atlantic seaboard and the Gulf ports in the grain trade. Out in our country last fall, or in the early winter, there was something of a rate war. The Gulf roads were carrying grain very low. They could not get above the Mississippi River rates, which will always fix the rate. The moment they put the rate up high the traffic goes by water. So that in determining rates you can always get a case of that kind and by that standard you can measure rates, so that you can not get very far out of the way.

Senator FORAKER. What is the differential now between Boston and New York in favor of New Orleans?

Mr. FIFER. On grain?

Senator FORAKER. Yes.

Mr. FIFER. I could not tell you just what it is now. They say that it takes, I think, about three quarters of a cent to a cent to divert the grain traffic from the Northwest to the Gulf, because there are some natural disadvantages at the Gulf—the warm weather—and it is preferable to ship the grain out from a port farther north. So that the Gulf ports in regard to grain and grain products labor under that natural disadvantage.

Senator FORAKER. The New Orleans and Galveston ports were not involved in this investigation the Interstate Commerce Commission has just made with reference to the differentials applying to Philadelphia and Brooklyn?

Mr. FIFER. No; they did not participate in that investigation at all, yet the witnesses reached out and they came in incidentally. But in the plate glass, this import case, they took leave to bring in the Illinois Central Railroad, and there is to be a further inquiry, as I remember, in regard to that.

Senator FORAKER. There is a differential in favor of New Orleans as against New York of something like 7 cents, is there not?

Mr. FIFER. On grain?

Senator FORAKER. Yes.

Mr. FIFER. A hundred?

Senator FORAKER. Yes.

Mr. FIFER. Oh, I think not so high.

Senator FORAKER. What is the differential in favor of Baltimore as a port?

Mr. FIFER. Well, we fixed that, but I am not prepared on those figures. At Baltimore it is a little more than it is at Philadelphia; I think about 2 cents at Baltimore as against New York and Boston. New York and Boston take the same rate.

Senator KEAN. Boston is not very well satisfied?

Mr. FIFER. No.

Senator FORAKER. New York and Boston have the same rate for exports. They have not the same rate, however, for domestic transportation, have they? Is not the rate from Chicago to Boston 2 cents per hundredweight higher than from Chicago to New York?

Mr. FIFER. On exports?

Senator FORAKER. No; on domestic.

Mr. FIFER. It is somewhat higher; but just the rate I could not tell you.

Senator FORAKER. But the rate for export is the same from Chicago to Boston as from Chicago to New York?

Mr. FIFER. Yes; but a little less at Philadelphia and a little less at Baltimore than at Philadelphia.

Mr. Commissioner KNAPP. May I be pardoned if I endeavor to answer that question?

Senator FORAKER. I would be very much obliged if you would.

Mr. Commissioner KNAPP. One of the earliest questions that came before the Commission was the proper adjustment of rates from the West as between New York and Boston. They had been very much higher to Boston. The Commission heard that case before I became a member of it, and decided that the domestic rate to Boston should exceed the rate to New York by one-tenth of the New York rate—that is, to be 10 per cent above. Carriers substantially complied with that determination, not by fixing the positive rate of 10 per cent above, but by making changes in the figures, which was substantially 10 per cent, so that now, I think, the difference ranges from 2 cents on the lowest class up to perhaps 8 cents in the first class, and possibly even more than that.

Senator FORAKER. Assuming it is 2 cents higher to the Boston port for domestic consumption than it is to New York, and the same for export from Chicago to Boston and Chicago to New York ports, what would be the effect of making the rate for exports from Chicago to Boston the same that it is for consumption? In other words, not giving Boston a differential for export as against her domestic rate?

Mr. Commissioner KNAPP. Why, I should think if the inland export rate to Boston were higher than to New York—materially higher; say, 2 cents—it would practically close up the Boston port.

Senator CULLOM. What is the differential between New York and New Orleans?

Senator FORAKER. I want to ask another question, if I may be permitted. On what basis do you make a lower rate for export from Chicago to Boston than you do for domestic transportation for consumption?

Mr. Commissioner KNAPP. Upon the theory that the through rate from origin to foreign destination must be at least as low through Boston as through New York to enable it to get any of that business.

Senator FORAKER. Otherwise it would all go out through the other port?

Mr. Commissioner KNAPP. Yes.

Senator FORAKER. That is, a difference of 2 cents a hundredweight from Chicago to a seaboard in favor of the one port would take all out of that port as against the other?

Mr. FIFER. Yes; where the difference in ocean rate is so slight as between New York and Boston.

Senator FORAKER. So that it is not a question of mere natural conditions existing at Boston and New York, is it?

Mr. FIFER. Scarcely at all.

Senator FORAKER. It has not anything to do with it? It is a direct preference, is it not? What else is it that leads the Commission to say that Boston may have 2 cents less for exports than she has for domestic importation?

Mr. FIFER. Broadly put, to permit Boston to participate in that export trade.

Senator FORAKER. Something she would not be allowed to do if the other rate prevailed?

Mr. Commissioner KNAPP. And on the further theory, not by any means to be lost sight of, that taking everything into account, it is for the advantage of the country that there should be competition between routes, and that not to have a rate adjustment which permits that competition is to give a preference to one port over another.

Senator FORAKER. In other words, if you were to leave those ports to themselves without any preferential or differential allowed in the rates it would be a different result from that which we have necessarily?

Mr. FIFER. Perhaps I do not quite appreciate that question.

Senator FORAKER. I say if it were not for a differential, which is arbitrarily fixed, the business would not be so arranged that the ports would share reasonably in the export trade?

Mr. FIFER. I think that necessarily follows.

Senator FORAKER. Now, another case. I had my attention called to the fact—I saw it somewhere—that between Buffalo and Boston and Fairport and Baltimore the distance is exactly the same, and yet there is a preferential of 3 mills by your recent order, I notice, in favor of the haul from Fairport to Baltimore. Heretofore there was a preferential in favor of the rate from Fairport to Baltimore as against the rate from Buffalo to Boston of 4 mills. Fairport is in Ohio. Now, on what ground is that differential justified? That is what I want to get, in a word, if you can tell me.

Mr. Commissioner KNAPP. Of course, the best answer would be to refer you to the reasons which the Commission has assigned, but in a word it is on the theory that there are certain disabilities at the ports of Philadelphia and Baltimore, and particularly with reference to the amount of ocean tonnage leaving those ports, the number of sailings, the very much less number of foreign ports reached from Baltimore and Philadelphia than from New York, so that there must be opportunities for a somewhat lower through rate by Philadelphia and Baltimore to the foreign destination in order that they may have an opportunity to compete for that trade.

Senator FORAKER. That is what I want to get at. Now, the distance being exactly the same, and there being no material difference between the hauls, the grades being practically the same, and the roads being equally good, as it may be assumed without contradiction, I think, then there is no ground in anything that is found before you reach the coast to justify a differential?

Mr. FIFER. Oh, yes; at Philadelphia and Baltimore they are nearer the grain fields of the Middle West.

Senator FORAKER. I am talking about Fairport and Baltimore and Buffalo to Boston. Those are the ports that I am talking about, where you allow a differential of 3 mills. On what ground is that justified?

Mr. Commissioner KNAPP. As I have said, upon the ground that the routes to foreign destinations via Philadelphia and Baltimore are under certain disabilities, which make it necessary that the through rate be somewhat more agreeable to the shipper by those routes in order to enable them to compete.

Mr. FIFER. That question was all thrashed out before I became a member of the Commission. There was a commission or a committee called the Thurman Commission, which investigated that at one time, and it was also before this Commission.

Senator KEAN. That was before the passage of the interstate-commerce law?

Mr. FIFER. The policy of the railroads of this country seems to be to make the lowest rate on export traffic, and that I think prevails in about all the countries in the world. It developed in the plate-glass case, the last case before the Commission, that in Belgium, where most of the plate glass of the world is made, on export glass the railroads charge much less than they do when they carry it for domestic consumption. Now, this differential question between these four North Atlantic ports has been before the Commission only once since I have been on the Commission, and it was by arbitration, by consent of the localities and the railroads, that they were submitted to the Commission to say what was fair and right under all the circumstances. Now, there were two reasons that influenced my mind to make the decision that we did. One was that those differentials had existed for a great many years. Men had invested, perhaps, fortunes, and cities had been built up on the faith of them, and then the shippers from the West, especially the grain men, wanted all these ports kept open so that they could make their choice. Now, if left simply to natural conditions, the port having the greatest natural advantage would draw to itself all the trade, and trade would become congested, and the others would go out of business, their vessels, for handling grain and the products of grain, would run down, and all that.

Now, we took the whole question as a sort of an equitable question and decided what was right and fair between these ports, not on the cold question of natural advantage alone, as we would, possibly, in some other case have done or as a court might have to do. It was a sort of a compromise finding and following the findings of the Thurman commission or committee and the previous finding of our own Commission.

Senator CULLOM. The Thurman committee or commission was really at work before the original interstate-commerce act was passed.

Mr. FIFER. Yes; but they did not change the facts nor circumstances. They existed just the same.

Senator FORAKER. They made their finding in 1882, I think, five years before the interstate-commerce act was passed.

Mr. FIFER. Now, the question was whether it was best for the people of this country to have one North Atlantic port for their traffic,

through which to reach foreign countries, or whether it was best to keep them all open so that the western farmer and the western producer could take his choice. Now, those are the influences that controlled my mind in the determination of that question, giving due weight also to the natural advantages of the different ports.

Senator FORAKER. I was not complaining of the opinion. I was merely stating that fact.

Mr. FIFER. Of course we could have taken the internal rate, the railroad rate, and carried it down to the water and chopped it off right there and said "we will not look beyond our own limits at all;" but we took into consideration the whole situation, and that is what all parties, the complainants and the defendants—if I may speak of them as such—desired we should do, and we investigated it and did the best we could under the circumstances.

Senator FOSTER of Louisiana. Judge Clements, in his statement the other day, stated that within the last two years the complaints lodged against the railroads have been more numerous than in preceding years. What is the character and nature of those complaints? Do they refer to unreasonable and unjust charges or inequality of rates between localities or discriminations between localities or persons?

Mr. FIFER. I can not answer definitely with regard to that. Mr. Clements is one of the members longest on the Commission, and familiar with so many of the facts internally concerning the work of the Commission, so that it was given over to him to examine these questions; and anyway, our Commission in that particular is a little like a court. A complaint is made. We do not rush in every time a complaint is made and read it over. The complaint is entered and under the statute we fix a time when the defendant must answer, and generally before the case is heard we look over the papers and see what are the issues. For that reason, I can not answer specifically. I can say generally that I think some of them concern excessive rates, but mostly perhaps it is discriminations between localities, and all sorts of questions. Still, if you desire exact information in regard to that, we could take the cases on file with the Commission, so that there would be no doubt about it. They are susceptible of exact information.

Senator FOSTER of Louisiana. I was under the impression that the majority of the complaints were lodged against the inequality of rates between places and localities.

Mr. FIFER. Very largely so, I think.

Senator FOSTER of Louisiana. Do you find the law to-day adequate to meet these complaints that are lodged against the carriers?

Mr. FIFER. Oh, in a measure we can administer some relief, but I think it is inadequate. I think, as I have said before, that if this power existed—it is a little like the President has said. He wanted a large Navy, not for war, but in order to preserve peace; and in the same way, if we have a delegation of power here that is effective, why, you will not have to exercise it as much as a great many think. In my judgment, it will sober these gentlemen and make them think twice before they raise a rate, and I think, on the whole, it would tend to more equitable rates throughout the country.

Senator FOSTER of Louisiana. If this constitutional power was conferred upon the Commission or some other tribunal, would that meet

the requirements of the situation, without any other additional legislation?

Mr. FIFER. I do not believe I catch your point, Senator.

Senator FOSTER of Louisiana. If a law should be passed conferring upon the Commission or upon some other tribunal the power and authority to fix the rates after condemning a rate as unreasonable, would that meet the situation? Would it enable the Commission to correct all of the abuses that now exist?

Mr. FIFER. Oh, possibly not all of the abuses; but it would assist in a very large measure. Now, to illustrate, there are discriminations of all kinds—large discriminations and small discriminations. There is a gentleman in this room who made complaint against a railroad. He was a fruit shipper from the South, and he complained that he was not furnished equal facilities for unloading when the fruit reached Chicago. Well, that was a discrimination, and there are many others of similar kinds; so that you can not make a law to meet every little case of that kind, but it must be under the broad provisions of the law that prohibits discriminations of all kinds.

Senator KEAN. Was there a complaint made in that case?

Mr. FIFER. There was a complaint made in that case, and it was heard; but before an opinion was put forth the parties got together and adjusted the matter between them, and now they are the very best of friends, I believe.

Senator KEAN. It was not the question of rate, then, but it was a question of service?

Mr. FIFER. It was a question of service, and it did not affect the rate, and yet it was covered by the statute. I mention that to show you that there are other discriminations and other complaints that are frequently made that perhaps have not been called to your attention, as illustrated in this particular instance.

Senator FOSTER of Louisiana. You think, then, that additional legislation is necessary, even should the Commission be clothed with this additional power, do you?

Mr. FIFER. No; I think there was power already in the Commission to meet the requirements of the fruit case that I speak of.

Senator FOSTER of Louisiana. No; I mean generally speaking. If Congress should simply pass an act conferring upon this Commission authority to fix a rate after the Commission had condemned an existing rate as unreasonable, would that meet the requirements of the present situation?

Mr. FIFER. I do not see what more Congress can do in that particular instance.

Senator FOSTER of Louisiana. You think that the present law, the law as it now stands, and the clothing of the Commission with this additional power would meet the conditions?

Mr. FIFER. Not that alone. I have referred to other things here that I think ought to go with it.

Senator FOSTER of Louisiana. With the suggestions you have made?

Mr. FIFER. Yes; and I do not say now that the amendments I have suggested here will cover the whole gauntlet at all.

Senator FOSTER of Louisiana. I have been absent from a good many of the hearings, and I should like to ask you if the rate charges now

are lower than they have been for a number of years past, taking the general railroad rate throughout the country?

Mr. FIFER. That would be a question of almost impossible solution. The railroads would say "yes," while the Commission would say, on the whole that they are higher. Now, in a sense on many articles, the rates are lower; and yet you take the articles that constitute the great bulk of the traffic—the products of the farm and the factory and the forest, which I think constitute the large bulk of the heavy traffic of this country, my own notion—and yet I could not say without going over the tariffs for the specific purpose of ascertaining that, whether on the whole they were higher, but I think the tariffs, as adjusted to-day, are yielding a larger revenue to the roads than they have formerly yielded. I know the roads, judging from net earnings, are very prosperous. Well, you will find, as we have found, if you dig into the question, that they are making very large improvements all over the country. There never was a time when railroads were being improved as they are to-day. Bridges are being put in, curves are being taken out, grades are being cut down, sidetracks are being put in, and better depot buildings, both freight and passenger, are being erected. Now, it has been testified to before us, even by Mr. Baer, of the anthracite coal roads, that when they put in a steel bridge, that is charged to current expenses, that they do not charge it to permanent improvements; and when they put in a sidetrack or build a station, I think it was testified that they charged that to current expenses, and that it was not charged up to permanent improvements. Well, now, there is so much of that going on that it reduces the revenues of the roads unduly. They will get through with these vast betterments that are going on at this time and then their earnings will make a better showing.

Senator FOSTER, of Louisiana. Then your judgment is that the rates are higher than they have been in former years?

Mr. FIFER. Well, as I say, I could not speak definitely on that matter. As I stated a moment ago, the statistical part of the statement was very kindly assumed by Judge Clements. It was of no use for all of us to go over that matter, and he assumed the work of the preparation for that part of the statement.

Senator DOLLIVER. I want to get at the opinion of the Commission as to how wide this power to fix rates ought to be. Now, I can see very clearly that it might be of great advantage to the public to fix the rates in a case where the existing rate was complained of as unjust and unreasonable to give the public the advantage of a reduction of that rate; but, if I understood Judge Clements correctly, he gave the impression that that power would be absolutely worthless as an instrument or means for putting an end to discriminations between places. In answer to a question which I propounded to him as follows:

"So that the mere power to fix the maximum rate would not enable the Commission to handle the question of discriminations at all."

Judge Clements replied that he did not think it would, and afterwards added that is was his opinion—and I think he undertook to express the opinion of the Commission—that this power to supervise the rates might properly be confined to the power of condemning an

unjust and unreasonable rate and substituting one that was just and reasonable.

Mr. FIFER. Yes.

Senator DOLLIVER. What is your opinion about that? What advantage, for instance, could the public get in the matter of putting an end to rebates by giving the Commission the power to fix rates?

Mr. FIFER. I think you were not in the room, Senator, when I was on that branch of the discussion in regard to rebates. I do not think that has anything to do with rebates.

Senator DOLLIVER. So that whatever power the Commission would have over the rates would probably not increase its efficiency in its effort to abolish rebates.

Mr. FIFER. I think it is a different exercise of power altogether. I think one is a police power and the other is an administrative power.

Senator DOLLIVER. Do you agree with Judge Clements in saying that the power to fix a maximum rate in cases where the complaint is of discriminations between two localities would be worthless?

Mr. FIFER. No; and I did not understand Judge Clements to say that. If he did, I hardly think I would agree with him. As I stated at the outset, Senator, there are three sections of that act. The first is as to reasonable rates, the third section is discrimination between localities, and the fourth section is the long and short haul clause. Now, I would like to have somebody tell me how any infraction of those statutes can ever be remedied without the change of a rate? Can you think of any? You are not on the witness stand, of course.

Senator DOLLIVER. Well, I wanted to get at how the discrimination between two towns could be remedied by simply fixing maximum rates. It was evidently Judge Clements's idea that in case of such a discrimination the fixing of the maximum rate would be a comparatively worthless proceeding, because the roads would be at liberty to restate the discrimination in lower terms.

Mr. FIFER. Well, as I said in the first part of the discussion here, when it comes to discrimination between localities on the same road—mark you, we have never exercised the authority, I think, when one road made one rate and another road made another rate, we do not interfere with that—I stated that it might be necessary in order to bring about a just equilibrium between those two localities to bring it about by lowering a rate entirely, or it might be by raising one rate a little and lowering another, and so bringing about a just arrangement between the two places.

Senator DOLLIVER. But would you confine that to cases where the discrimination occurred on the same line of road?

Mr. FIFER. I think I would. I would not interfere with those discriminations occurring on independent lines, because then you run up against the other proposition and destroy the competition between markets. For instance, if we should take hold of Mr. Fish's road, if we had the authority to say, "Here, we will fix your plate-glass rate at so much, and the rate for the people at our north Atlantic coast ports shall be fixed at so much," then the competition between markets would be gone.

Senator DOLLIVER. I ask these questions because an impression has been sought to be made here that this power of fixing rates or supervising rates is one that might very greatly affect the commercial situation of whole regions of country.

Mr. FIFER. And unsettle things.

Senator DOLLIVER. And unsettle things, and I wanted to get your idea whether it would be possible for us in conferring this power upon your Commission to narrow it, say, to these two propositions which you have mentioned—first, rates that are exorbitant and unreasonable in themselves, and, second, to those discriminations between localities which are perpetrated by the same railroad, where the localities are on the same line of road.

Mr. FIFER. Yes. You will find where those discriminations exist that generally the low rate is fixed by competition, and unless you take hold of other roads and destroy the competition between markets, it is almost impossible to raise that rate. You can cut down the rate.

Senator DOLLIVER. So you think to confer the power to do that on the Commission would probably net the public no good?

Mr. FIFER. It might in some cases and in some instances it might work some good. Where the competition was not very sharp, the roads might raise their rates; but it is the opinion of the Commission, and I think will be the opinion of this body when you are through, that the railroads can be relied on to make rates high enough. They will take care of that. It would hardly be regulating railroads to jump in and say that they are not charging enough and that they must put up their rates; and yet there are instances where perhaps it might be necessary to cut down one rate, and let the roads raise another rate a little to bring about a proper adjustment.

Senator NEWLANDS. Suppose there should be another depression such as there was from 1893 to 1897, and there should be, say, only three-fourths of the present transportation business. Would not the tendency be toward granting rebates again in the contest between these railroads for traffic?

Mr. FIFER. The temptation would be much greater than it is when the roads are getting about all the traffic they can haul. That stands to reason.

Senator NEWLANDS. Suppose such a condition should occur again and rebates should again be given, do you think you would be in any better position to check that condition than you were from 1893 to 1897?

Mr. FIFER. My own belief is that the railroads will never have the desire, and possibly under the same temptations never would return to the rate cutting and the rebate paying which they have done, and if they did the Elkins Act would now afford considerable relief by means of injunction.

Senator NEWLANDS. By means of injunction?

Mr. FIFER. Yes.

Senator NEWLANDS. You would rely mainly upon that, would you?

Mr. FIFER. Yes.

Senator NEWLANDS. Now, prior to that time the law itself forbade these offenses, and parties were punished for violation of the law?

Mr. FIFER. Yes.

Senator NEWLANDS. Now, you substitute for that or add to it the issuing of a writ of injunction, and the judge summarily punishes a violation of the injunction?

Mr. FIFER. That is right.

Senator NEWLANDS. I ask why should the injunction be any more

effective than the law itself? It certainly would not enable you to get at the facts any more easily, would it?

Mr. FIFER. Well, it operates more quickly. It avoids a long hearing before a grand jury. It does away with all the prosecution officers of the court, to some extent, and summarily you simply put the strong hand of the law on the man's shoulder and bring him into court and find out——

Senator NEWLANDS. Granting that, I understand your chief difficulty has been in getting at the facts. Would you not have as much difficulty under the injunction process in getting at the facts as under the process of indictment?

Mr. FIFER. Possibly. I pointed out here how I think you could get at the facts much better if the amendment was adopted, and that is to have some authority to employ expert accountants to go into these offices, and let that be their regular business, to examine these books; and still, even then, if they have a mind to pay rebates there would be great difficulty, as there is in finding out about any crime.

Senator NEWLANDS. Would not that involve some kind of a secret service or detective force?

Mr. FIFER. Yes; it might develop into that, and it might become necessary anyway. There is no great difference between finding out a violation of that statute and a violation of any other criminal statute.

Senator NEWLANDS. During the period from 1893 to 1897, when this condition of things existed, when, according to the statement of the traffic managers themselves it was general, did the Commission make use of detectives or a secret service force of any kind?

Mr. FIFER. No, sir; we had no detectives, and as I remember it we had no fund, no appropriation that would enable us to do that. I know in several instances we could barely get through with our routine work.

Senator NEWLANDS. Have you such a fund now? Is such a fund provided now?

Mr. FIFER. I think it is not in the hands of the Commission.

Senator NEWLANDS. In whose hands is it?

Mr. FIFER. Not for this purpose. It was for the enforcement of the antitrust law. There was such a fund as that placed in the hands of another Department of the Government.

Senator NEWLANDS. Ought not funds to be provided for such purpose?

Mr. FIFER. I think if you are going to leave this power with the Commission, there ought to be some means adopted to get at the books—some skilled person, and possibly a number of them, to keep watch and detect the violations of this law as you would of any other law. I think that ought to be done, whether you leave this power with the Commission or whether you give it to someone else.

Senator NEWLANDS. How would you organize such a service as that?

Mr. FIFER. I could not state now. You would organize it as you would any other detective force.

Senator NEWLANDS. Would you put it under the control of the Commission or entirely separate?

Mr. FIFER. I would take that duty away from the Commission

entirely and make it a separate duty. The railroad complains, and I think justly—although the members of the Commission do not agree in regard to that exactly, but there is no one of them, I believe, who would object to it seriously—the railroads do not want to have their civil rights submitted to a tribunal that is spying upon them and whose duty it is to convict them in the courts of the country and to obtain fines and imprisonment to be imposed. The conditions are not just what they ought to be in that particular. I think there is no member of the Commission who would object seriously to taking the duty of expert examination away from the Commission and conferring it upon some other body.

Senator NEWLANDS. Admitting all that, my inquiry is as to where you would vest that power. Would you put it into the Attorney-General's department?

Mr. FIFER. Yes! that would be a proper place.

Senator NEWLANDS. Then, in that event, you would rely——

Mr. FIFER (continuing). Or it might be put into the hands of the Department of Commerce and Labor.

Senator NEWLANDS. Is there not some way of organizing this Interstate Commerce Commision in such a way as that you could have one part that will attend entirely to the quasi-judicial functions of hearing and determining, and another branch of that Commission to transact the detective and police duties?

Mr. FIFER. So far as I can see now, I would answer no.

Senator NEWLANDS. Would not that work better than putting them so far apart as giving these powers to the Attorney-General's office would involve?

Mr. FIFER. It is altogether likely it would. That is a matter of detail, however, that nobody can tell in advance just what would be best to do.

Senator NEWLANDS. I hope that in making your recommendations to the committee as to the amendment of this law you will cover that point, because we want the benefit of your experience. My own idea is that you must in the course of your investigations and hearings, and in the discharge of your duties, get a lot of information that would be available for such purposes that would not be available to the Attorney-General, who has nothing to do with the general performance of your duties.

Mr. FIFER. That presupposes that the execution of the criminal side of the statute should remain with our Commission.

Senator NEWLANDS. Either remain with your Commission or be intrusted to a branch of your Commision.

Mr. FIFER. Well, make it a branch; that might be the better way. It is impossible, Senator, for anybody to tell in advance just what is right, perhaps. You would have to try it first. Take the interstate-commerce act; was anybody foolish enough to suppose that in providing for the control of interstate commerce over a vast country like this the first cut was going to get just the right law? Why, it takes a hundred years sometimes to perfect laws. Take all the old English statutes, and the English common law, which has been in existence for years and years, and most of the States have adopted it. On the one side you have the violators of the law always trying to break through or get around the law, and the lawmakers

on the other side are always trying to close up the gaps. When you come to those old statutes that have stood the test of years you have got perfection; but now you are leading out on a new branch. You will not perfect this statute in the next session of Congress. You could not do it unless you had divine wisdom. It has got to come with experience, and in the course of time, perhaps many years yet, you will have perfected this statute.

Senator NEWLANDS. Yes; but we ought to make an effort to make it as perfect as possible.

Mr. FIFER. To act under the best light you have at this time.

Senator NEWLANDS. Now, another question in regard to the great fixing centers of the country. How many of them are there, in your judgment?

Mr. FIFER. I could not tell that exactly; you know the great cities where the railroads center.

Senator NEWLANDS. Chicago and St. Louis?

Mr. FIFER. Yes; and New York.

Senator NEWLANDS. New York?

Mr. FIFER. And Philadelphia and Baltimore and St. Louis and Kansas City.

Senator NEWLANDS. You have read the testimony of the traffic managers as to the thorough system they have of keeping in contact with commercial conditions, obtaining information, and all that. Would you regard it as a good suggestion in connection with the Interstate Commerce Commission to have one member of the Commission at each one of these rate-making centers, so that he could act either alone or in conjunction with other members of the Commission called from Washington?

Mr. FIFER. There are advantages about that, and it has its disadvantages. For myself, I have thought for some time that there ought to be an officer at Chicago, and as far back as Mr. Morrison's time on the Commission, I think he advocated that all the while, so that people could have somebody near by whom they could go to and consult; and yet frequently—not every day, but every few days—there are questions on which the entire Commission should pass. Now, it will not do to have two commissions acting independently of each other, because these rates are so interwoven and interlaced that there must be uniform action throughout the country.

Now, I do not speak egotistically when I say that the Commission has a wider view of all the rates in every section and quarter of this country than any one traffic man almost could have. He may know more about his own particular locality, but we have a wider vision, and I may be permitted to say that without any egotism whatever.

Senator NEWLANDS. You think, then, that a man who has not been trained in rate making or in traffic management can go upon this Commission and in a few years get a general view of the entire situation?

Mr. FIFER. Not in a few years. It takes a number of years, and it takes hard study. Now, I think in the year closing the first of last July, which is what we call our year, I must have traveled ten to fifteen thousand miles, and what is true of myself is true practically of all the other members of the Commission.

Senator KEAN. And you saw a very prosperous country.

Mr. FIFER. Every section and quarter of it.

Senator NEWLANDS. Do you think it would be advisable to have upon this Commission in any way men who have been trained as in the traffic departments of the various railroads, who have acquired a large experience in rate making?

Mr. FIFER. Well, I think it would be well to have some man of that kind on the Commission, of practical experience; but after all, when you come to a throw-down, when it comes to the last say, it must be said by a court composed of lawyers; and after all these freight men thrash out the whole question they make their rates and they come to our Commission. It is all digested. You have their side of the case in a nutshell and you have the complaint, and you soon catch the force of what they say about it and get onto what really ought to be done.

Of course, if all the freight men in the United States were to get together and undertake to make a schedule of rates to do exact and equal justice between all parties, they could not do it, and this committee can never frame a law that will do exact and equal justice in every particular. A brave old English judge, after a lifetime upon the bench, in thinking and talking over these perplexing questions, exclaimed in the bitterness of despair, "How imperfect is the most perfect system of human justice!" You can never obtain absolute justice, especially in these cases. It is not like the trial of a promissory-note case before a court. In that case either the man executed the note or he did not. Either he owes the money or he does not, and if he owes it you figure up the interest and you can reach an absolutely correct solution, but this is only an approximation.

Senator NEWLANDS. Still it is a duty that requires men of good judgment, and the question I have asked you is as to whether the efficiency of the Commission would, in your judgment, be increased by adding to your number one or more men who had been trained in rate making.

Mr. FIFER. Well, as I said a moment ago, I think one such man on the Commission would aid very materially.

Senator NEWLANDS. You think he would aid and not detract from the work of the Commission?

Mr. FIFER. Oh, I think he would be a help, yes; because you could lean on him, and he being a freight man might give you points.

Senator NEWLANDS. Now, as to elasticity. Assuming that we pass a law giving you the power upon complaint to determine what is a reasonable rate. Apparently that would be the fixed rate for the future, would it not?

Mr. FIFER. It might or it might not.

Senator NEWLANDS. Now, do you recognize the fact that it is at all important to keep these tariffs in a flexible or elastic condition, so that rates can be changed quickly in response to changed conditions?

Mr. FIFER. Do I believe in that?

Senator NEWLANDS. Yes.

Mr. FIFER. Most certainly.

Senator NEWLANDS. Very well. Now, a rate fixed by the Commission as a reasonable rate would apparently be a permanent rate, would it not?

Mr. FIFER. I am very glad you called my attention to that. We

have talked that question over between ourselves on the Commission, and I think it is the opinion of the Commission, possibly without any exception, that there ought to be a time when this thing shall be wiped off the slate, so to speak, after one or two years' time, if conditions change, so that then the road shall be free to make its own rate.

Senator NEWLANDS. Now, Judge Clements was of the opinion that you could permit the carrier to change the rate immediately, even after it had been affirmed by the court, if in the judgment of the carrier conditions varied.

Mr. FIFER. There is no doubt about that. I think that is true. They could apply to the Commission at any time.

Senator NEWLANDS. No; I understand his idea was that the railroad, upon its own initiative, should be permitted to change the rate, even after it had been fixed by the Commission and approved by the court, leaving to its judgment the question as to whether conditions had so changed as to warrant it, and, of course, leaving that action open to the revision of the Commission upon complaint. What do you think about that?

Mr. FIFER. Do you mean to pass such a law?

Senator NEWLANDS. Would you deem it wise to go as far as that?

Mr. FIFER. I think if you pass a law giving the Commission the right to condemn a rate when it is challenged, and the right to say what a reasonable rate is, and put it into operation, and then fix a time when it shall go out unless it is reviewed and reversed by some court—I would not cut that off—I think that would be sufficient elasticity.

Senator NEWLANDS. You would not go as far as Judge Clements goes in that particular?

Mr. FIFER. I do not understand that Judge Clements——

Senator NEWLANDS. I do not think I misstate you, do I, Judge Clements?

Mr. CLEMENTS. You do not misstate it. My idea was that whenever a rate is condemned and another one goes into effect and there are any substantial changes that would justify a changed rate, it might well be left with the railroads. They will not trifle with it, because you would still be in court, and if there was no justification of it there would be another opportunity.——

Mr. FIFER. If it was still pending in court, it might be held open for that matter.

Senator NEWLANDS. But assuming that it was not pending in court.

Mr. FIFER. I understand there never has been a time when a case was pending, or decided by the Commission, that they could not apply to the Commission in the same case for a modification of its order.

Senator NEWLANDS. Yes; but that is quite a different case. In such a case you have to consume a certain amount of time in applying for a modification of the order, and the complaint is that all the conditions might change before they would have an opportunity to ripen any such proceeding into a decision.

Mr. FIFER. If conditions had very radically changed, and the roads felt that they could not apply to the Commission, let them change it, subject to another condemnation. That could be done.

Senator DOLLIVER. Without fixing any time?

Mr. FIFER. Without fixing any time.

Mr. CLEMENTS. Without having a de novo complaint, but in the same proceeding.

Mr. FIFER. In the same proceeding. That could be done, and I think it is the view of the Commission that a rate when it is once fixed by the Commission should not continue forever, but that there should be some time when the railroads ought to be free——

Senator NEWLANDS. Free to exercise their judgment according to conditions.

Mr. FIFER. To exercise their judgment in changing that rate.

Senator CULLOM. We are obliged to you, Governor, for giving us your views, and we will let you go now, and will hear another colleague, Mr. Cockrell.

STATEMENT OF MR. H. S. RAND.

The ACTING CHAIRMAN (Senator CULLOM). I call attention to a paper I have here, handed to me by Senator Dolliver, written by some one with whom he is acquainted. I think it would be well to have the paper in the record.

The paper referred to is as follows:

BURLINGTON LUMBER COMPANY,
Burlington, Iowa, May 17, 1905.

Hon. STEPHEN B. ELKINS,
Chairman Senate Committee Interstate Commerce,
Washington, D. C.

DEAR SIR: As an Iowa manufacturer I desire to refute the statement of Governor Cummins, who purports to represent the manufacturers of Iowa. The following is taken from page 17 of the Hearings before the Senate Committee on Interstate Commerce on the 20th day:

[Extract from p. 17 of the Hearings, twentieth day, before Committee on Interstate Commerce.]

Mr. CUMMINS. To put it concretely, the railways—unconsciously, not maliciously at all—have decreed that Iowa shall remain an agricultural State, and their rates are so adjusted that it will so remain. That is the complaint that I, on behalf of my State, and of those, at least, who believe with me, make of the present law.

The CHAIRMAN. Why do you say that the railroads have decreed that Iowa shall not become a manufacturing State?

Mr. CUMMINS. I reach that conclusion simply because all our manufacturers, when they attempt to reach beyond our own State, meet rates that so discriminate against them that they can not compete with manufacturers elsewhere.

The CHAIRMAN. Do not the manufacturers of your State have the same advantages of rates that the manufacturers have in other States?

Mr. CUMMINS. I am not prepared to answer the question as broadly as you put it. I say that the manufacturers of our State have not the same chance to reach their markets as have the manufacturers in surrounding States.

The following are rates made to manufacturers in Burlington as compared to their competitors:

MACHINERY, C. L.

To—	From—	Distance.	Rate.
		Miles.	
Denver, Colo	Burlington	816	$0.84½
	Chicago	1,021	.92
	St. Louis	926	.84½
Salt Lake City, Utah	Burlington	1,340	.97½
	Chicago	1,546	1.05
	St. Louis	1,460	.97½
Butte, Mont	Burlington	1,406	1.25
	Chicago	1,537	1.25
Joplin, Mo	Burlington	453	.35
	Chicago	638	.42½
	St. Louis	332	.35
Spokane, Wash	Burlington	1,791	1.40
	Chicago	1,922	1.40
Fargo, N. Dak	Burlington	596	.35
	Chicago	651	.42
	St. Louis	836	.52
	Minneapolis	282	.27
Oklahoma City, Okla	Burlington	607	.65
	Chicago	792	.72½
	St. Louis	543	.65
	Memphis, Tenn	486	.58
	Cincinnati, Ohio	980	.74
Atlanta, Ga	Burlington	847	.53
	Chicago	800	.51
	St. Louis	637	.51
	Cincinnati, Ohio	516	.41
	Memphis, Tenn	464	.37

FURNITURE, C. L.

Denver, Colo	Burlington	816	$1.02½
	Chicago	1,021	1.10
	St. Louis	926	1.02½
Salt Lake City, Utah	Burlington	1,340	1.92½
	Chicago	1,546	2.00
	St. Louis	1,460	1.92½
Butte, Mont	Burlington	1,406	1.97½
	Chicago	1,537	2.05
Spokane, Wash	Burlington	1,791	2.42½
	Chicago	1,922	2.50
Joplin, Mo	Burlington	453	.24
	Chicago	638	.31½
	St. Louis	332	.24
Oklahoma City, Okla	Burlington	607	.74
	Chicago	792	.83
	St. Louis	543	.74
	Memphis	486	.67
Fargo, N. Dak	Burlington	596	.64
	Chicago	651	.77
	St. Louis	836	.86
	Minneapolis	282	.44

IMPLEMENTS AND WAGONS, C. L.

Denver, Colo	Burlington	816	$0.82½
	Chicago	1,021	.90
	St. Louis	926	.82½
Salt Lake City, Utah	Burlington	1,340	1.30½
	Chicago	1,546	1.38
	St. Louis	1,460	1.30½
Butte, Mont	Burlington	1,406	1.82
	Chicago	1,537	1.35
	St. Louis	1,500	1.35
Joplin, Mo	Burlington	453	.23
	Chicago	638	.30½
	St. Louis	332	.23
Oklahoma City, Okla	Burlington	607	.60
	Chicago	792	.67½
	St. Louis	543	.60
	Memphis, Tenn	486	.57
Spokane, Wash	Burlington	1,791	1.62
	Chicago	1,922	1.65

On these rates the Murray Iron Works Company are enabled to sell the best and cheapest Corliss engines in America, and you will find their engines running in every State in the Union.

The Leopold Desk Company can make desks from mahogany grown in Africa and ship them not only to all the States, but to Europe, Asia, and Africa.

The Chittenden-Eastman Company are enabled to be the largest jobbers and manufacturers of furniture in the United States.

The Mississippi Valley Pearl Button Company sell their buttons in competition with any factory in the world.

Besides a long list of smaller but very prosperous concerns.

While we have no large packing house here I desire to quote some rates from neighboring Iowa towns where large and prosperous concerns are located:

PACKING-HOUSE PRODUCTS, C. L.

To—	From—	Distance.	Rate.	Export.
		Miles.		
New Orleans, La	Des Moines	1,050	$0.40	$0.33
	Ottumwa	989	.40	.33
	Chicago	922	.36	.29

TANKAGE, C L.

To—	From—	Distance.	Rate per ton.
		Miles.	
Atlanta, Ga	Ottumwa	916	$5.90
	Des Moines	977	5.90
	Chicago	800	5.10

IOWA CODE.

SEC. 2126. Code of Iowa provides that common carriers "shall charge no more for transporting freight to or from any point on its railroad than a fair and just rate, compared with the price it charges for the same kind of freight transportation to or from any other point."

SEC. 2145. If any such railway corporation shall charge, collect, or receive for the transportation of any passenger or freight of any description upon its railroad, for any distance within the State, a greater amount of toll or compensation than is at the same time charged, collected, or received for the transportation in the same direction of any passenger or like quantity of freight of the same class, over a greater distance of the same railway; * * * or if it shall charge, collect, or receive for the transportation of any passenger or freight of any description over its railway a greater amount as toll or compensation than shall at the same time be charged, collected, or received by it for the transportation of any passenger or like quantity of freight of the same class being transported in the same direction *over any portion of the same railroad of equal distance;* * * * all such discriminating rates, charges, collections, or receipts, whether made directly or by means of any rebate, drawback, or other shift, shall be received as prima facie evidence of the unjust discriminations prohibited by this chapter; and it shall not be a sufficient excuse or justification thereof on the part of said railway corporation that the station or point at which it shall charge, collect, or receive less compensation in the aggregate for the transportation of such passenger or freight, or for the use and transportation of such railway car the greater distance than for the shorter distance is a station or point at which there exists competition with another railway or other transportation line."

Owing to the above the Iowa rates on coal to Burlington are so high that our factories get their supply from Illinois.

Soft coal, carloads, to Burlington.

From—	Distance.	Rate per ton.
	Miles.	
Dunfermline, Ill	88	$0.85
Peoria, Ill	96	.85
Avery, Iowa	93	a .97
Oskaloosa, Iowa	105	1.01

a Iowa distance tariff.

Thanking you for your kind attention, I remain,
Yours, truly,
H. S. RAND.

STATEMENT OF INTERSTATE COMMERCE COMMISSIONER FRANCIS M. COCKRELL.

Mr. COCKRELL. Senators of the committee, I can only say to you what I would say if I were still a member of the Senate and called upon to vote on this question.

Senator CULLOM. That is a pretty good standpoint.

Senator DOLLIVER. That covers our case exactly.

Mr. COCKRELL. I would delegate to the Interstate Commerce Commission the power, not to initiate or originate ratings for the railroads, because I do not think that question is at issue at all. I do not think anyone will claim that either Congress or any commission should undertake to take up the entire traffic on our railroad systems and fix rates in advance as to what should be charged. I would delegate to the Commission the power to regulate the rates fixed and declared by the railroad companies under the provisions of the existing law, and to decide whether the rates prescribed by the railroads were reasonable and just or unreasonable and unjust, and to decide after complaint and investigation what was a reasonable and just rate in that case.

Then after that rate was fixed and found by the Commission, it should continue to be the legal rate until it was otherwise settled, and I would authorize the railroad, after the lapse of a reasonable time from the decision and order of the Commission, to go into the existing courts of the United States, if they desired to contest the ratings found by the Commission. The burden of proof would then be on them to show that the rate fixed by the Commission was not a reasonable and just rate, and in that case the court would have full jurisdiction to determine whether the rate first established by the railroads and declared to be unreasonable by the Commission was an unreasonable or unjust rate. The court would likewise have the authority to say whether the rates fixed by the Commission was a reasonable and just rate, and the court might decide, and in my judgment, the court would be compelled to decide the question. I think that if they technically may not have the jurisdiction, they would assume the jurisdiction and settle the questions that Congress had delegated to them to settle, namely, the question whether the

rate was reasonable or unreasonable, just or unjust, discriminatory or otherwise. I think the courts would decide that. We have no common law in this country in regard to railroads, but our courts have taken the responsibility of establishing precedents from year to year, and we are getting to have a pretty considerable system of railroad law here, growing out of the decisions of the courts, and for that reason I would leave this question to the existing courts.

Senator DOLLIVER. There might be a point between the rate fixed by the railroads and the rate substituted by the Commission where justice and reasonableness would lie.

Mr. COCKRELL. That is true, and when the court found——

Senator DOLLIVER. Could we clothe the court with the jurisdiction to find that point?

Mr. COCKRELL. When the court found that the rate first fixed by the railroad company was unreasonable and unjust, then if it should find that the rate fixed by the Commission was also unreasonable and unjust, it would devolve upon the railroad company to fix another rate, and necessarily that rate would have to be intermediate between the rates first fixed by the railroad and then the rate fixed by the Commission, both of which were declared to be unreasonable and unjust. Then if that rate afterwards fixed was still complained of, I think the Commission would have authority to reexamine the case and again fix upon some rate that would be deemed reasonable and just.

Senator DOLLIVER. The courts have seemed to hold that in adjudging rates fixed by the Commission to be unlawful, a court would be controlled, not by the question of its reasonableness, but by a very much narrower question, to wit, whether it confiscated the property of the railroad.

Mr. COCKRELL. I do not think so. I do not think our court would be tender-footed about that. I think they would decide the question exactly as Congress presented it to them, and that is whether it was a reasonable or an unreasonable rate.

Senator NEWLANDS. And they would probably hold that anything less than a reasonable rate was a confiscatory rate?

Mr. COCKRELL. I think not. I do not think they would come that close to it. Now, of course, the reasonableness, or you may say the justice, in a question of rating is a very nice question. Here is a rating, we will say, for example, of 5 cents per 100 pounds. The complainants say that is too much. The Commission finds that that is an excessive rate and they say that 4 cents is a reasonable rate. There is a margin of 1 cent between them. Now, it would be a question as to whether the 5 cents was a reasonable rate. If they found that, then the court would also have to find whether the 4 cents was a reasonable rate. Now, the court might think that even 3½ cents would be a reasonable rate, and as a matter of course if they thought that way, then they would hold 4 cents to be an unreasonable rate and would so declare. Now, when that was declared, you would have the fact that they were both found to be too high. You would have a maximum to go by. The Commission would have a question for determination later, but I do not see why the court might not determine the question as to whether the rate fixed either by the Commission or by the railroad was a reasonable and just one. They

might have to draw nice distinctions. Anybody, any railroad man, would have to draw them, even to mills or tenths of a mill. In all these things that has to be done.

Senator DOLLIVER. But you would give to both parties the right of appeal?

Mr. COCKRELL. I would give to both parties the right of appeal.

Senator DOLLIVER. Suppose the railroad fixed a rate, say, at 5 cents, and the Commission at 4, and both parties appealed, the complainants in the original case claiming that two and a half cents was about the proper figure.

Mr. COCKRELL. Well, then, it would be for the court to settle. I think the court would settle it. The courts settle all other controversies before them.

Senator CULLOM. And all that you propose to say is that, in your judgment, the Commission ought to have the right to determine what would be a reasonable rate after finding that another rate is unreasonable?

Mr. COCKRELL. Yes; I think so.

Senator CULLOM. And make an order accordingly, and if the railroads did not like it they would have the right to appeal to the courts.

Mr. COCKRELL. They have the right to appeal to the courts, independently of this law. If it was confiscatory proceeding that the Commission had instituted against them, they would not have to refer to this law. They could go in and restrain us; but under this law they can test it as to whether it is reasonable or not. No confiscatory measures will ever be proposed under the law when you can take it right into court. They would have the right to go right into court and the railroads would have the two remedies. They would have the remedy provided here by going into court, and they would have their natural remedy of proceeding to restrain anything that was confiscatory of their property without due compensation.

Senator FOSTER of Louisiana. Would you have the finding of the Commission go into immediate effect?

Mr. COCKRELL. The finding of the Commission should go into immediate effect; I am glad you referred to that point, because I did not cover it before. I would have the finding of the Commission go into immediate effect, but remain subject to appeal and decision of the courts; and if there was no appeal, or if the decision of the court was that the rating was a reasonable and just one, that rate should be observed and obeyed, you might say for some reasonable time—you might fix some time. It ought to remain the rate and the legal rate until the conditions and circumstances existing at the time the rate was fixed by the Commission had substantially changed, so as to justify a change in the rating.

Now, I do not know how long that might be. It certainly would not be a permanent decision that could not be reviewed in any way, and I am inclined to think that the railroads would have the right under general principles of right and justice, if the conditions had wholly changed and the circumstances clearly justified an increase—they ought to have the right to make a change, and then that changed rate would be subject to be passed upon by the Commission.

Senator FOSTER, of Louisiana. The railroads say that as a rule the

party losing a litigation in a trial has the right to suspend the execution of the judgment even of a court by giving a proper bond, and that the putting of your finding into immediate execution, where an appeal is allowable, works an injustice to them by not giving them the opportunity of having the findings of the Commission suspended by an appropriate and proper bond. What have you to say about that?

Mr. COCKRELL. Do I understand that in the event that the Commission was delegated with the authority to fix the rate they would want the right to apply——

Senator FOSTER, of Louisiana. To suspend the execution of that order.

Mr. COCKRELL. To apply to the courts?

Senator FOSTER of Louisiana. During the pendency of the appeal.

Mr. COCKRELL. To suspend that operation?

Senator FOSTER of Louisiana. To suspend that order.

Mr. COCKRELL. I do not think there would be any necessity of mentioning a thing of that kind in the law.

Senator NEWLANDS. You think the courts would have jurisdiction to do it anyway?

Mr. COCKRELL. I think the courts clearly have jurisdiction, and if the rate fixed by the Commission was such a rate as would result in great and speedy harm to them, they could get out an injunction. You must remember that they have twenty or thirty days before the rate goes into effect after it has been ordered by the Commission. Now, they have that time within which to get out an injunction, and if it was a case where they would have no remedy, and they had collected the small rate and could not collect the other, and they should show clearly that what the Commission had done was an irreparable wrong, the court would suspend it until the court could hear the question.

I do not think there is any question but what the court would do that. It ought to do it. I do not think it would be necessary to make a restriction of that kind in the law. Now, in addition, I would make the railroads responsible for everything transported on their lines, the private cars and private car lines and everything, and would make them report to the Commission just as they do now, the rates for everything. They report some things now. I would make them report everything, the rates for icing and everything of that kind. I think the railroads ought to be responsible for it. There was a time when the fruit interests and various things of the kind had not developed, when it was a new matter, and it would have been a great expense to the railroads to furnish all the cars at once, but that time has passed. The industry has been developed. Take the immense freightage, for instance, that comes from California and from Michigan and from the South, and all around, in the fruit season.

These private car lines can be absorbed by the railroads, and now with the knowledge they have the railroads can furnish the cars for this service and one line can exchange with another, just as they exchange cars now, under similar regulations that they can establish. Probably they have cars enough, if properly distributed, to carry the various products of that kind. They will have to increase the number of them, and the railroads ought to do it, just as the Michigan Central has already done. The Michigan Central has refused to re-

new its contracts with the Armour Car Lines, and the Pere Marquette road will refuse to renew its contract, which expires in September next. I understand there are several railroads in the country that own their own cars of this sort—that is, they have a corporation composed of their own company, and the railroad company owns all the stock in this corporation, and as a matter of course I suppose they ought not to dispute that they are liable, but it is a serious question now as to whether some of these companies are liable or not. It is claimed that there have been very great outrages perpetrated, that extortionate charges have been made for icing and the transportation of things of that kind.

Senator CLAPP. Then your suggestion that the carriers be held responsible for the icing charges is a matter, as I understand you, that involves the abolishing of the private car lines?

Mr. COCKRELL. Well, I do not know, Senator. That is a question.

Senator CLAPP. I was getting your view of it.

Mr. COCKRELL. I say I do not know whether I would undertake, in the law, to declare that they should be abolished and not permitted to continue, because there is a great deal of property invested in some of these car lines and there ought to be no injustice done them. They are getting a very reasonable compensation for the value of their cars in the rates paid by the railroads for their use; but I think it is a vicious system that has grown up because of the necessities of the business in the past, and that now it is time to end it and make the railroads responsible for it, or that they must arrange with these private car companies in such a way as to make them responsible for the icing and for all the charges connected with the service—that is, to make the railroads so responsible, and let them settle with the private car companies. I do not think they will have a great deal of trouble in settling that. Whenever it is so that they are under control I think they will be able to settle it without any very great wrong being done.

Senator CLAPP. Would not that leave a very wide opportunity for a form of discrimination that would be very difficult to get at and detect, if men or companies could own these private car lines and they themselves be engaged in the business of producing and distributing those products which the carrier was theretofore carrying?

Mr. COCKRELL. You are right about that; there is no doubt about it. They have held up many a railroad in this country and made them make contracts with them. They have the power to do it, and in some instances I have been told they have said: "Here, we have got to have certain rights or our products don't go in them over your line." I would not allow any private car owner to have any right of control of the cars which were used by the railroads. The railroads must have absolute control and must make no discrimination in favor of the owners of the cars.

Senator NEWLANDS. The only right of the owner of the car would be to have compensation for the use of his car?

Mr. COCKRELL. For the use of his car, and he can be placed on an absolute footing. If he is not, the same trouble you speak of will continue. If they are allowed to put their products in in preference to everybody else, why, it will give them, as a matter of course, a preference and be a discrimination.

Senator CLAPP. Does not the mere relationship there——

Mr. COCKRELL. That is true. I make this recommendation, that if there were no cars existing and there were no property interests involved, I would say what you do in that matter; but there is to be a transition, and sometimes it is not best for them to be sudden and instantaneous. Now, if you make the railroads responsible for the cars and everything connected with them, and only give them authority to lease the cars if they want to—but they must have control and must not give preference to anyone regardless of whether he is an owner or not, in the products they carry—I think that will remedy it, and the railroads will absorb them in a very short time.

Senator NEWLANDS. Can not that transaction of the lease of the cars themselves be made the record for some discrimination or rebate of the owner of the car who would be engaged in selling products?

Mr. COCKRELL. I do not see how it could without being a violation of the law.

Senator NEWLANDS. It might be difficult to get at, that is all.

Mr. COCKRELL. There are a great many things that have to be transported in special cars, particularly fruit, and it is a very large business, also vegetables and perishable products, and it is a great benefit to the company, and it enables people of every portion of the country to have the products of every other portion at a reasonable price.

Senator CULLOM. And we all get the best there is.

Mr. COCKRELL. Yes; and some of the charges have been pretty high.

Senator KEAN. Some of the charges at some of the dining stations of the railroads are pretty high too, Senator, for the passengers. To get your dinner at some of the dining stations costs a good deal.

Mr. COCKRELL. I do not think there is any comparison between that and the subject about which we are talking. Between the dining room at the side of a track where a train stops and the icing of a through product from one point to another, where it has to be iced here, and there, and there, I do not think there is any comparison.

Senator KEAN. But that is the food.

Mr. COCKRELL. That is a part and parcel of the transportation. That car has to be given it in order to transport it.

Senator KEAN. But that is a part of your transportation, too. You would feel uncomfortable if you could not get something to eat.

Mr. COCKRELL. Well, of course I do not think there is any comparison between an eating station where people are free to come and go, or not, just as they choose, and something which has to be done to the product while it is still on the cars and in course of transportation. I think that is a very clear distinction to make, and I think the courts would do it if it was ever to come before them.

Senator KEAN. Then you distinguish between the inanimate and animate?

Mr. COCKRELL. I do not know. There is some difference between them anyway, whether I think it or not. As I said, I have come to this conclusion because I believe it would be for the best interests of all the people—those who produce these commodities that are to be transported and to the people who consume these products and make a market for them and of the railroads and of our whole country and the business interests of the country.

Now, I came to this conclusion after looking at the Commission in the first place. How was it appointed? Selected by the President from the people of the whole United States, confirmed by the Senate, and has no power except the power which has been delegated to the Commission by the Congress. Now, I think that when the President of the United States has made a selection and the Senate has confirmed those men that we may reasonably infer that they are honest; that they are intelligent; that they are patriotic; and that they have at heart the best interests of all the people of the United States; and that in the administration of their offices they would hear all cases and decide them fairly and impartially, and aim not to do anything that would be unreasonable or unjust or that would be a wrong to any portion of our country.

Now, does not the past justify this judgment of a commission? You have had the Commission since 1887. A complaint is made that a rate is unreasonable or discriminatory or in violation of law, and that is reduced to a formality if it is not in proper shape, so that the railroads can know exactly what is charged against them.

Now, the railroads are notified of that charge which has been made against them, and they are allowed a reasonable time within which to answer it, and they answer it under oath, and they make their defense as best they can. Now, then, the Commission, after that is done, appoint a time and place for a hearing, and before that Commission come all these freight agents and all the traffic managers, and they get all the facts that they can, and the Commission takes page after page of evidence. These men are cross-questioned by the lawyers representing the railroads, and you must confess that they are gentlemen of great abilities and attainments. They are cross-questioned by them in order to present the case in the best possible form, and the complainants are heard from the record as to the charges.

Now, here is a case where the Commission has to decide whether that is a reasonable rate or not. It takes into consideration everything that any freight trafficker has named. It takes into consideration the rates that have existed for years and years past on that line, and the rates that have existed on similar lines, and the character of the products, the place where the products originate, the place to which they are destined, and everything which could have any weight or consideration by a freight trafficker is brought before the Commission, and the Commission is fully informed in the matter. Then they make their decision. This has been going on ever since 1887.

Now, what have been the results? Is not the railroad business in this country in better condition to-day than it ever was before, in every sense of the word, and in the contentment and satisfaction of the people? It is said that this Commission has failed; that it has been overruled and reversed in the courts. Now, let us examine that phase, and I will detain you but just a few seconds on that point. I think that we should understand it exactly. I believe all the members of that Commission have been lawyers except one. And one, I think, was selected because he was a railroad man. Now, I must say to you frankly that if I were President of the United States and making the selection I would not want any traffic manager or any railroad man on that Commission. I would not want any man whose

judgment might be biased any way by his previous training and service. You do not pick judges out, who have to pass upon these railroads, because they have been freight traffic managers or anything of the kind, and they are the ones who have to finally pass upon this whole matter. They are not selected because of that.

Now, let us examine some of the cases that have gone to the courts. I will take the case of the Interstate Commerce Commission *v.* The Detroit and Grand Haven Railroad (167 U. S.). In that case the United States circuit court for the western district of Michigan sustained the decision of the Commission, and the United States circuit court of appeals and the United States Supreme Court reversed the decision of the circuit court. That shows that the judicial mind had not been unanimous in overruling the decisions of the Commission, because here was a circuit judge that sustained the decision and then the court of appeals and the Supreme Court reversed that judge and reversed the Commission.

Now, we will take the case of the Florida Fruit Exchange *v.* The Savannah, Florida and Western Railroad (167 U. S.). The decisions of the Interstate Commerce Commission were sustained by the United States circuit court for the southern district of Florida and also by the circuit court of appeals, and the United States Supreme Court reversed both of them. I think the Commission is in pretty good company there. It decided the case, the United States circuit court and the circuit court of appeals sustained the decision, and the Supreme Court reversed the whole thing.

Well, now, we will take another case, that of the Interstate Commerce Commission *v.* The Texas and Pacific Railway Company (162 U. S.). The decision of the Commission, in the circuit court for the southern district of New York—and there are supposed to be great lawyers and jurists there—was sustained, and on appeal to the court of appeals that decision was affirmed; and the Supreme Court of the United States reversed both of them.

Now, then, in the case of Behlman *v.* The Louisville and Nashville Railroad (169 U. S.) the decision of the Interstate Commerce Commission in the circuit court in the South Carolina district was reversed. The Commission was overruled by the circuit court of the district of South Carolina, and on appeal to the circuit court of appeals the Interstate Commerce Commission's decision was sustained, and then on appeal to the Supreme Court the court of appeals was reversed.

Senator CULLOM. What became of the Commission? Were they reversed, too?

Mr. COCKRELL. They were reversed, too. But you will notice the conflict of the judicial mind on these intricate questions.

Now, I come to the Colorado Fuel and Iron Company *v.* The Southern Pacific. In that case the order of the Interstate Commerce Commission was sustained by the United States circuit court for the district of Colorado, and the United States circuit court of appeals, April 6, 1900, reversed the decision of the circuit court. The case did not go any further.

Now, in the East Tennessee and Georgia Railroad Company *v.* The Interstate Commerce Commission (181 U. S.) the circuit court for the eastern district of Tennessee affirmed—and I want to call

the special attention of the committee to this case—affirmed the decision of the Interstate Commerce Commission. And on appeal to the United States circuit court of appeals that decision was affirmed, and on that circuit court of appeals was Judge Taft, the present Secretary of War, and Judge Lurton, and Mr. Justice Harlan, of the Supreme Court. Now, then, that case was taken to the Supreme Court and by the Supreme Court was reversed.

Now, it seems to me, if you analyze these, the decisions of the Interstate Commerce Commission have been about as well sustained as the decisions of the district and circuit courts, and even the court of appeals.

Senator CULLOM. As many judges deciding for the question as there were those deciding against it?

Mr. COCKRELL. Yes; and they have been from all over the country. Now, in this process there is a kind of a law being established throughout the country.

Senator DOLLIVER. Has the Supreme Court been unanimous in all of these cases?

Mr. COCKRELL. No; they have not been unanimous at all. In one case, although I am not certain, there were three judges who dissented.

Now, I want to come to one case, that of The Interstate Commerce Commission *v.* The Louisville and Nashville Railroad. The order of the Commission was sustained by the United States circuit court for the southern district of Georgia. In this case a multitude of points were involved. In the first place there was complaint against the rate on cotton, turpentine, and rosin, and other property conveyed by the Louisville and Nashville Railroad from stations in Florida to Savannah. Then there were charges in regard to rates on bacon and other freights, groceries and hardware, etc., transported from Savannah to Pensacola and Atlantic points, and there were charges as to the rates on all the lines from New York to Pensacola and the Atlantic division on general articles of freight, but especially on sugar.

Now, there were divers railroads and divers charges submitted to the Commission, and the Commission was called on to decide that case. It has been intimated that with the contrariety of business, and those things, the Commission might throw everything into confusion by having so much before it. I want to read just a little. You have this report here, but I want to call attention to it. In the first place, the Interstate Commerce Commission decided, after having all the railroads, all the traffic managers, and all the attorneys in presenting the evidence and in presenting the contracts, that the rates on sugar and other products from New York to Pensacola and other Atlantic points were not in violation of the law, and then they decided that the rates on bacon and other articles from Savannah to Pensacola and other points were not seriously wrong, and they dismissed the charges against the sundry railroads as to those two charges. And then they decided as to the rates on cotton, turpentine, rosin, and other articles from stations in Florida to Savannah. Now, I will read what the Commission say in regard to that:

The Commission found that the rate on uncompressed cotton from stations in Florida on the Pensacola and Atlantic division to Savannah was $2.75 per bale at the time of hearing. When complaint was filed and for some years prior

thereto, but subsequent to the hearing, this rate had been increased 55 cents, to $3.30 per bale. The rates from the same points to Mobile and New Orleans had been, and were at the time of the decision, respectively, $2 and $2.50 per bale. The Commission held that the rate of $2.75 to Savannah was not unlawful, but that the whole advance of 55 cents was unlawful, and that any higher rate on such cotton to Savannah than the former difference of 25 cents per bale above the rate in force from the same stations to New Orleans violated sections 1 and 3 of the statute. The Louisville and Nashville made certain local rates on rosin and turpentine from stations on its Pensacola and Atlantic division in Florida to Pensacola, Fla., and had joined with connecting carriers in making certain through group rates from the same stations to Savannah. For its service to the junction point, namely, River Junction, Fla., the Louisville and Nashville exacted a share of the through joint rates to Savannah which greatly exceeded its purely local rates for like distances to Pensacola, while the shares accepted by its connecting carriers were reasonably low. Upon consideration of all the facts and circumstances the Commission held that the shares of the Louisville and Nashville in the freight rates to Savannah were unreasonable and unjust under sections 1 and 3 of the act, in comparison with the rates to Pensacola.

The Commission further held that rates on rosin and turpentine from such Pensacola and Atlantic division stations to Savannah should be adjusted to the rates to Pensacola by adding to the local rates of the Louisville and Nashville for the distance to Pensacola which is nearest to the distance from each station to River Junction the present share accepted by the carriers to Savannah from River Junction, provided that on shipments of turpentine to Savannah from stations east of Mossy Head the Louisville and Nashville should have more than its local rates for like distances to Pensacola, and that such rates should be determined by adding the rate of 6 cents from Sneads to Pensacola, the carriers east of River Junction accepting their present share from such stations east of Mossy Head.

With respect to these rosin and turpentine rates, the Commission said in its opinion that whatever difference may have seemed necessary at the outset to create a demand in the Pensacola market, it had become apparent after several years' trial that the rates to Savannah, as compared with the Pensacola rates, gave an unwarranted advantage to Pensacola; that in endeavoring to build up the near-by market at Pensacola, and so furnish these products with a market in addition to the one existing at Savannah, the Louisville and Nashville was acting in the interest of producers of and dealers in naval stores on its Pensacola and Atlantic division, but that it had so adjusted rates as to give Pensacola a practical monopoly of the trade. The Louisville and Nashville claimed that the lower scale of rates to Pensacola was necessary to hold the traffic for long hauls on the Louisville and Nashville system to points north and west of Pensacola. The Commission ruled that when a carrier makes rates to two competing localities which give one a practical monopoly over the other because it can secure reshipments from the favored locality and none from the other, it goes beyond serving its fair interests and disregards the statutory requirement of relative equality as between persons, localities, and descriptions of traffic.

The railroad companies against whom the order was directed refused to obey it, and thereupon the Commission brought suit to enforce its order in the United States circuit court for the southern district of Georgia. That court, in July, 1902, rendered its decision, fully sustaining the Commission and requiring the enforcement of the various provisions of the order. The carriers appealed to the circuit court of appeals, but the appeal was never perfected. The president of the Louisville and Nashville Railroad, the general superintendent of the second division of the Atlantic Coast Line, and the superintendent of the fifth division of the Seaboard Air Line were cited before the court for contempt. Subsequently, upon hearing in the contempt case, the defendants offered to comply with the decree of the court enforcing the order of the Commission, and thereupon, counsel for all parties consenting, a decree was entered by the court suspending the contempt proceedings until otherwise ordered. In that decree the railroad companies were granted leave upon substantial changes of the circumstances and conditions affecting the traffic to apply to the court for such modification of its decree as they might desire.

The defendant railroad companies were required to pay the costs of the contempt proceeding and to refund to the parties entitled thereto any charges collected by them in excess of the rates provided for in the decree enforcing the order of the Commission.

Now, there is one of the most complicated cases, involving various interests and various points and many companies. The Commission made a decision. Now, what happened? The company refused to pay. They took an appeal, but did not perfect it, and when they were brought up for refusing to obey the order of the court, as they had been ordered to do, turned around and paid it. Well, there was no panic produced by that thing. There was no great wrong done. The roads themselves were unwilling to take it to a higher court, and rather than perfect their appeal and prosecute the procedings, they yielded to the decision of the circuit court. That shows exactly how this Commission has been proceeding. Everything has been considered, and I think its work has been eminently beneficial to the railroads and to the country. There have been many cases that have been settled, many little cases, many little irregularities, where amicable relations have been established between the shipper and the railroad company by virtue of the action of the Commission.

I will mention one little thing. A former constitutent of mine, from Missouri, living in the strawberry region, sent me a bill that he had paid. I sent it down to one of our auditors. He compared it with the rating and the bill of rate or rates filed by that railroad company, and there was an overcharge of probably $56. I have forgotten the exact amount—do not remember it exactly. The company was notified that this overcharge existed. Now, as a matter of course, that party could have gone into court, and there is no doubt he could have shown a clear violation of the law. The Commission hunted the matter up, and they settled it. They immediately advised me they would have the matter looked up, and it was done.

Senator CULLOM. Who hunted it up?

Mr. COCKRELL. The railroad company. He could have gone to court and harassed the railroad company if he had wanted to do so, but he would have been compelled to pay the cost, for it was a clear error.

I find, in looking over the reports and decisions of the Commission, that that has been the general rule, and that many cases have been decided, and many cases have decided where damages were assessed by the Commission, and the railroads have paid them rather than to go into further litigation. I believe that it is to the very best interests of the railroads that this power shall be delegated and the question settled, and that there will not be any abuse of power in a Commission selected by the President and confirmed by the Senate, following the precedents that have been established by the Commission itself and by the decisions of the courts.

Senator CULLOM. You mean that there will be no danger to the railroads?

Mr. COCKRELL. No danger to anybody. I believe it will be promotive of good. I believe it will be to the interests of the railroads, and that they will thank Congress inside of twelve or eighteen months for having delegated that authority to the Commission.

The CHAIRMAN. The committee desires to thank the members of the Commission for their attendance and the statements which they have presented.

Senator NEWLANDS. Before the Commission leaves, I would ask, do

I understand that they are to submit to the committee amendments that they would suggest to this bill, and among other things I would call their attention to this division of the powers of the Commission, either into two branches of the same Commission or segregation to some other Department.

STATEMENT OF MR. SAM H. COWAN, FORT WORTH, TEX.

The CHAIRMAN. Now, Mr. Cowan, as I understand it, you have a prepared statement. Our time for hearings is very short, as we have a good many things before us to consider. Now, inasmuch as you have prepared a written statement, I want you to comment, if you please, on that and be as brief as you can. I make this statement because we are pressed by other parties who desire to be heard.

Mr. COWAN. Mr. Chairman, and Senators of the committee, I perfectly understand the situation and attitude of the committee. That the committee may understand my attitude permit me to remark that while I have been before it before, it was previous to the time that it had very seriously taken up the investigation. I happened to be here and appeared before the House committee, and the time allotted to me was so short that I had but little time in which to proceed.

The interests which I directly represent—and they are not, by the way, as a member of the board of trade or anything of that kind, but it is a direct, immediate, employed representation—may be said to be the western and southwestern cattle-shipping interests, with some representatives of the other live-stock interests in the sheep business and the horse business. The associations by which I am the regularly employed attorney, and by whom I am sent here in lieu of their having sent their own men and others whom they might as well have sent——

Senator KEAN. Are they the same ones you appeared for in March, 1900?

Mr. COWAN. I appeared only in March, 1900, if that be the date, for the Texas Cattle Raisers' Association.

Senator KEAN. And a good many others?

Mr. COWAN. I appeared in connection with gentlemen who were representing others, to then present resolutions with respect to the twenty-eight hour law, which resolutions were passed by the National Live Stock Association. But I was not directed nor specifically employed by them as I am to-day.

All the cattle associations of these various States, for the purpose of undertaking to further this legislation, believing that it is necessary and important to them to do so, last May organized through a committee of three gentlemen from each of the cattle associations of 11 States and Territories west of the Missouri River, including the State of Iowa (east), made up funds, passed resolutions, and started out on the line of attempting to aid in getting this sort of legislation passed. The persons whom I directly represent are the shippers of approximately—estimated, of course—150,000 cars of live stock a year, worth a hundred million dollars. We ship out of the State of Texas about 1,250,000 tons of live stock, interstate, per annum. I am not enabled to state precisely what amount of live stock we furnish to each of the markets, but Mr. Garfield, in his reports, says that there is furnished

to three markets—St. Louis, Chicago, Kansas City—about 850,000 head of cattle. He leaves South Omaha, Sioux City, and St. Joseph out, though we ship but little to Sioux City.

The members of our association are engaged in business and pasturing of a very large number of cattle throughout the Northwest in the northern ranges. I mention this, gentlemen, in order that you may understand that I am not here simply as an individual. It is quite immaterial to me whether the committee considers even my name in connection with the matter, but I am here representing these other people who are interested, who pay more freight and furnish a larger amount of traffic than any other industry west of the Missouri River, with the possible exception of the grain traffic. I am not quite certain that that exception should be mentioned. We want reasonable rates of freight. For the purpose of an effort to undertake to get them the American Stock Growers' Association was permanently organized at Denver on May 9, 10, and 11, this year, with the most representative live-stock men throughout the West—all of the largest concerns practically, with very few exceptions—and backed by each of the cattle associations of the different States, including representatives of the Corn Belt Meat Producers' Association of the State of Iowa.

In order that I may show you the interest which the public take in this matter and those who are paying the money that supports the railroads of that country, I will ask the committee to permit me to read the first section of the constitution, as follows:

ART. 2. The objects of this association are:
First. To secure to shippers the establishment and maintenance of just, fair, reasonable, and equitable rates of freight and other charges and prompt and efficient service, and to that end to press before the Congress of the United States proper measures to so amend the act to regulate commerce that the Interstate Commerce Commission shall have the power when it finds a rate charge or practice to be unjust, unfair, unreasonable, or otherwise unlawful, to fix and substitute therefor a rate charge or practice which is just, fair, and reasonable, and for the purpose of enforcing such laws as do or may secure fair rates and good service to prosecute all such proceedings as shall be necessary to that end after exhausting all reasonable means to secure voluntary adjustment of the same by the railroads.

Now, gentlemen of the committee, these resolutions were drafted and presented by men who represent millions and millions of dollars. I will undertake to say that the executive committee of that association, consisting of 30 men in number, represent not less than a hundred million dollars of investment in the West.

It was stated here before this committee by Mr. Peter Jansen and Mr. Hord, from Nebraska, that there were no complaints among the cattlemen of the West, scarcely, that the rates were all right and that there were no difficulties out there. I have been informed of that fact since I came here, and I have received telegrams from Denver, from Trinidad, and some papers published out there, in respect to the matter, and I will ask to call your attention to the fact that those statements according to the information which has been given to me are and were not true. It may be true in the opinion of the gentlemen who made them, but opinions stand for nothing in the presence of facts.

Senator KEAN. Your complaint is that the rate is too high?

Mr. COWAN. Yes, sir.

Senator KEAN. If I remember your testimony, which I have before me here, given in 1900, you stated:

I will say it is the best conducted business in this country and most profitable.

The CHAIRMAN. You say it is the most profitable?

Mr. COWAN. Yes. I speak advisedly.

The CHAIRMAN. Cattle shipping?

Mr. COWAN. Raising cattle.

Mr. COWAN. That was true, Senator Kean, but it has not been true for the last two or three years, and if you desire evidence upon the subject, you may inquire of Senator Dolliver, because he certainly ought to know. It is said of Iowa that there have been thirty banks broken in that State on account of the unprofitableness of the cattle business in the last few years and that seven cashiers have committed suicide.

Senator DOLLIVER. I would like to have that thoroughly verified before I would affirm the truth of it.

Mr. COWAN. I said it was so stated. I saw it in the newspapers. I do not know whether it was true or not.

Senator DOLLIVER. Cattle-feeding business has not been profitable.

Mr. COWAN. That may be true.

Senator DOLLIVER. I think it may be said that catttle feeding—that is, bringing in cattle from the West for the purpose of feeding in Iowa—has not been profitable; but I think our home agriculture has been fairly profitable.

Mr. COWAN. I think that is true. I have the testimony, if the Senator desires it, of some 50 cattlemen, collected from Kansas, Nebraska, Iowa, Colorado, South Dakota, Oklahoma, Indian Territory, and New Mexico and Arizona, on file with the Interstate Commerce Commission, and these gentlemen have proven that the last two or three years have not been profitable. That does not entitle us to a lower rate of freight.

Senator KEAN. Some gentlemen in New York might think that the stock exchange had not proven profitable in the last few weeks.

Mr. COWAN. I do not know anything about that. It is very foreign, at least to the inquiry. The inquiry here involves the question as to whether or not we think the rates are too high. I say yes; we believe the rates are too high. That is not for this committee to try, however. It is not a question of trial for this committee to determine whether any complaint is correct or is not. We have a statute which now provides that unjust and unreasonable rates are unlawful, but unfortunately there is no adequate remedy to enforce that statute. What we ask and believe is, that if the law is being violated the committee will provide the remedy without stopping to try the case as to whether in every instance the complaint may be just or not. However, if the law has not been violated, no one need fear the remedy. If it has, they may.

I offer here a statement from the Colorado Record Stockman with respect to the company and as to whether Mr. Jansen and Mr. Hord are correct in their statements made before this committee. I will say that if the committee desires it we can bring here hundreds of men to testify, but it is useless. I present these resolutions to prove the fact. I also desire to present the resolutions that were adopted

at this meeting in Denver. I present this article to prove the fact, as follows:

JOIN THEIR FRIENDS—TWO PROMINENT NEBRASKA STOCKMEN GO TO WASHINGTON FOR THE RAILROADS.

The report that T. B. Hord, the well-known cattle feeder of Nebraska, and Peter Jansen, the prominent sheep feeder of that State, had gone to Washington to testify before the Senate committee in the railway-rate investigation was not surprising to western stockmen, as only a few months ago Mr. Hord was known to be a constant kicker on railroad rates and service, and Peter Jansen had even been talked of for the position of president of the American Stock Growers' Association. But when the news came from Washington that both Mr. Hord and Mr. Jansen had testified in favor of the railroad side and stated that they were satisfied with the rates and service it was like a thunderbolt from a clear sky. That there would be some stockmen found to do the Judas act was, of course, expected, but that such men as Hord and Jansen should be the first was startling.

It is well known that both Hord and Jansen have been receiving special favors from the railroads. They are both large shippers, and if the Elkins Act was strictly enforced both would be up against a heavy fine for accepting favors from the railroads. But neither make any attempt to deny the fact that they are under special obligations to the railroads, and it is apparent from reading between the lines of their testimony that pressure has been brought upon them by the railroads. As both are very heavy shippers, and the railroads practically have it within their power to put them out of business, friends of the two men are confident that they were simply forced to take the position they did and that at heart they are with the stock interests. Here is how the two men testified:

T. B. Hord: "At the present time the railroads in Nebraska give us good service; they grant all reasonable demands. We have the railway officials among us, and we want conditions to remain unchanged, because we are prospering. I came here at the request of friends who agree with me, because we think it right to enter our protest. I know of no complaints from the Southwest about rates on live stock."

"How do you happen to come here?" asked Senator Foraker. The witness replied that he had been invited to come by friends.

Peter Jansen: "We do not want any rate legislation. We feel that traffic managers are nearer to us than any commission could ever be, and we are satisfied that they are always ready to meet any reasonable man halfway. The present system of adjusting rates between shippers and carriers is perfectly satisfactory to us. The shippers of the Southwest who have complained of high stock rates are free-range men who do not ship any stock. The real shippers have no complaint."

The CHAIRMAN. Make them a part of your remarks, and put them right in.

Mr. COWAN. Yes, sir. I also desire to introduce similar resolutions passed by the cattle growers' interstate executive committee in Denver, on January 9 of this year:

Whereas President Roosevelt in his message to Congress has, in apt and positive terms, recommended that the powers of the Interstate Commerce Commission be extended so as to vitalize it and thus give to the live stock and other shipping interests a speedy and adequate remedy against rates found to be unjust, unreasonable, discriminatory, or otherwise unlawful; and

Whereas the constant and persistent demand which you have made is thus clearly and distinctly indorsed by the President, in spite of the powerful influence of the railway and other corporate interests: Now, therefore, be it

Resolved by the cattle growers' interstate committee, That we indorse the action of the President in his every effort to so control corporations, trusts, and monopolies as to destroy the evil of them, and to give everyone in the race of life a "square deal," and that we specially indorse his message upon the subject of railway regulation and in this manner extend our thanks for duty well performed, and pledge ourselves as an organization, and individually, to lend him our united support.

Be it further resolved, That a copy of this resolution be sent by our secretary to the President.

[Resolution indorsing House bill 14477.]

The following resolution was unanimously adopted:

Whereas the live-stock shippers throughout the entire West have suffered great loss and inconvenience by the failure of railroad companies to furnish cars for shipment within a reasonable time; and

Whereas many of the railroads claim, particularly originating lines which do not reach the markets, that they can not procure cars because of the failure of connecting lines to supply same; and

Whereas some railway companies in the West do not permit live-stock shippers to route their cattle or other live stock over the lines which they desire, so as to go the most expeditious route; and

Whereas the Texas and Pacific Railway Company in particular canceled its interstate rates from Texas points, forcing the unloading of cattle at all connecting points: Now, therefore, be it

Resolved by the cattle growers' interstate executive committee, representing the organized cattlemen through their respective cattle organizations in the various Western States, That we petition Congress to pass an appropriate measure whereby railroads will be required to furnish cars upon reasonable notice to do so for all shipments of live stock, and requiring each connecting carrier to furnish and exchange empty stock cars for loaded stock cars upon reasonable notice, and to require that each railway company shall, upon reasonable provision being made for compensation for the use or value of such cars, permit loaded cars of live stock to go off their own lines and over the lines of connecting carriers without unloading.

And further be it resolved, That we indorse House bill No. 14477, introduced by the Hon. W. R. Smith, of Texas, upon these subjects.

The committee then adjourned.

W. A. HARRIS, *Vice-Chairman.*
FRED P. JOHNSON, *Secretary.*

Senator KEAN. What is the date of that last resolution?

Mr. COWAN. The last resolution was dated March 9, this year.

Senator KEAN. Is that not in the former hearings that we have had?

Mr. COWAN. No, sir.

Senator FORAKER. Judge, the rates on live stock of the interests that you represent have been advanced, have they not, recently?

Mr. COWAN. Yes, sir; I will reach those points, and call the committee's attention to them specifically.

Now, I will undertake to say, briefly, that the effort which has been made to prove that public sentiment has waned with respect to the desire for an amendment of this law, in my judgment, is not correct, and I believe that it is evident, if the committee were to take pains to examine it, by resolution of the various legislatures, by the editorials in the papers, by the resolutions of these various stock associations, and, I believe, practically of all the producing associations of the country, wherever they have held meetings, so far as I know, have passed resolutions with respect to it.

I merely call attention to it, not that you should be governed by what they do by resolution, but in answer to the suggestions which have been so frequently made. The same conditions exist which would call for it. I know the railways have made strong efforts and they have the right to do it, to assuage public sentiment on the subject, but their declaration that they have thereby succeeded is not proven by the mere fact of the declaration. It is the consumer or the producer who "pays the freight." A gentleman testified in an investigation before the Interstate Commerce Commission, a gentleman who

represents the Board of Trade at Dallas, Tex., a very large distributing point, that Dallas did not so much care that the railroads had advanced all of the class rates from St. Louis, and therefore from all the East to Texas common points, provided the advance should be made the same to Fort Worth, San Antonio, and all other competitive points, for he said, "They are not interested in that." And the reason is manifest. They simply charge the freight in the cost to the jobber or to the retailer. The retailer has always been able to do that, and so it may happen that the retailer has to stand some of the expenses. It will always happen that the consumer will stand the most of it, or the producer must stand it. Whoever can dictate the price of his article can add to it always of necessity the amount of the freight.

It is perfectly impossible for the producers and consumers of this country to undertake to come here to testify before you. They rely upon you as their representatives and upon their Representatives in Congress to act for them. They can send a few men here if they are organized. They can not send the money and send many people here to represent them, for producers' organizations as a rule, among farmers, are as poor as churches, and that is poverty personified when you get into the country where these things are produced that make the great prosperity in this country. I say, therefore, that you can not assume that because a number of gentlemen have been here who perhaps had advantages by reason of certain classes of freight and preferences, and say that they are satisfied with their rates, that they speak for the whole country. From the fact that discriminations exist, which is admitted, there must be somebody who gets the benefit and somebody who pays the expense. The man who gets the benefit has been here, if we may judge from the evidence. The men who suffer perhaps have not been able to come, for he who can receive the benefit may even travel on a pass and not have to pay his fare. He may even have a suggestion made to him that he should come. They have been brought here by the diligence, of course, of the railway, which had a perfect right to do it, but their evidence should be weighed, in light of the circumstances, with the fellow against whom there is a discrimination, who does have a complaint to make, and who has not been here except where there is some organization able to send a few men.

The CHAIRMAN. I think it is proper for me to state right here that every name furnished us by Mr. Bacon, whom we recognize as representing all the interests favoring the legislation asked for, has been examined, and every person who has applied to come before the committee we have allowed to come, and sent word to him and announced that we paid the mileage and per diem.

Mr. COWAN. I am glad you told me that. I have been very busy, and I did not know about that.

The CHAIRMAN. And furthermore I think it is proper for me to state on behalf of the committee that we asked Mr. Bacon not only to come here and represent his side of the question before the committee, but to remain and furnish us names from time to time.

Mr. COWAN. In view of the statement of the chairman, I will say that there was not the slightest idea in my argument here that this committee had in any sense sought to select one or another. I meant

to say, if I did not say, and I believe I did, that the diligence of the railroads had brought before the committee probably a larger number of those persons who are satisfied with the rates than the shippers of the country had been able to do. That may be so or may not. I simply do not say. I imagine so from reading what I have in the reports. If you take a case like this, the Wichita, Kans., case, which has been mentioned so often, which place has to pay a much higher rate than Omaha for certain things, probably lumber and a number of other articles, the Omaha men may be perfectly satisfied; the lumber dealer in Texas may be perfectly satisfied, because he is selling the lumber to the Omaha market, and therefore he may be perfectly satisfied with his rate, yet that does not mean that all the lumber rates are right.

Now, I make no contention that there are any widespread erroneous rates in the country as a general proposition. I have investigated the matter considerably, and I am satisfied that on the whole the rate adjustments of the country are made probably with good judgment, but I say there are exceptions to that. The exceptions are growing. They will continue to grow. The simple love of gain is what will bring it about. It is that which has brought it in the live-stock business, because, as cited in a previous statement, our rates have been very greatly advanced. Now, there has been no change in conditions which would justify the advance, as we believe. In taking the testimony of that case the work has been enormous. It would take three or four days.

Senator DOLLIVER. What case do you refer to?

Mr. COWAN. The case that is involved in the western and southwestern cattle rates.

Senator DOLLIVER. To what case do you refer?

Mr. COWAN. It is the case under the name of The Cattle Raisers' Association of Texas *v.* The Missouri, Kansas and Texas Railway Company et al., running before the Interstate Commerce Commission, to be argued on the 25th of this month. Now, I do not care to anticipate before this committee my argument there, and I will not detain you with that.

Senator KEAN. You mean the Cattle Growers' Association is in restraint of trade under the Sherman law?

Mr. COWAN. I scarcely think so. It does not regulate prices; it does not attempt to. It does not affect competition. If it could regulate prices it would be a trust.

Senator KEAN. It tries to be just as big a trust as it can be?

Mr. COWAN. Yes, sir; and if we were incorporated under the laws of New Jersey we might fairly succeed.

Senator DOLLIVER. Does the complaint in that case state all the grievances of the western cattle people?

Mr. COWAN. Oh, no; the complaint is part of my original statement here last winter, but it does not state all the grievances of the western cattlemen, for when it was filed it was by the Texas association. Subsequently the western stockmen in Colorado and South Dakota asked the Commission that they be included. The investigation was started and consolidated, so that now it embraces a wider range geographically than it did before and a much wider range of companies. Now, let me call your attention to some points which

seem to justify our assertion that these rates have been unreasonably advanced. In 1898 those rates to most Texas points were 8 cents a hundred pounds lower to Kansas City than they are to-day.

The CHAIRMAN. Eight cents?

Mr. COWAN. Eight and one-half cents. In that year the Atchison, Topeka and Santa Fe Railway Company, which reaches all that southwestern country by its various lines, hauled 430,644 tons 1 mile per mile of road.

In 1904 the volume of traffic was so increased that it hauled 598,216 tons 1 mile per mile of road. The percentage of empty car mileage remained practically the same. The freight earnings per train mile in 1898 was $1.47; in 1904, $2.45. The earning per car mile in 1898 was 10.6 cents; in 1904, 17.73 cents. The tons per train mile in 1898 were 153 tons; in 1904, 249 tons. The revenue per ton per mile increased from 9.64 mills to 9.81 mills between 1898 and 1904. Now, that same condition, substantially, with varying exceptions, is exhibited in Table 91, which has been prepared at great labor for all the southwestern systems of roads leading out of Chicago, St. Louis, and Kansas City, which handle the livestock of the West. The gross earnings and the net earnings on each system of road have enormously increased. The train loads on each one of these systems of roads have enormously increased, as you will observe. The contention that the railroads have been compelled to haul light trains in order to give the speed in the live-stock movement is not true. In the trial of this case we had presented statements made from each of certain prominent division points to which these cattle passed, showing the actual contents of trains for certain periods, not only of livestock, but of freight, but in every case except out of Grand Island, on the Union Pacific, the trains which carry live stock carry more loaded cars than the average of all trains, including those which carry livestock, and, of course, therefore, a greater tonnage than the trains which do not carry livestock.

Now, some gentlemen have stated here that they are losing money in this kind of business. At all events they do not make any money, and indicate that they are losing money.

Senator KEAN. They wanted to state it was not the business they sought.

Mr. COWAN. I want to show you that that is not true, and I will show you by actual figures. There is no guessing about this. I will not bother you with detail after I show this. The expense of engine and train service, and all other expenses, leaving out maintenance of way and maintenance of freight equipments and general expenses, is 55 cents per average locomotive mile—that is, on the Santa Fe—and on that basis it would cost $325.05 per train service from Fort Worth to Kansas City. In the case of live stock there would be $58.25 expense, not specific, incident to other freight, which would bring it up to $383.30. As shown above, the expense of repairs and renewals of freight cars amounted approximately to 7 mills per car mile, which would be $3.14 per mile for the 591 miles, which for 25 cars would amount to $123.40. Total expense for receiving and transporting 25 cars from Fort Worth to Kansas City, $486.70. Whatever of expense should be borne of maintenance and of road structure and general expenses should be added, but this should not amount to much. This would leave a profit in the transaction of $1,605.12.

Senator DOLLIVER. Per train?

Mr. COWAN. Yes, sir. A train of 25 cars from Fort Worth to Kansas City, on a basis of a loading of 23,000 pounds—viz, $83.95—is $2,098.75.

Senator DOLLIVER. For how many miles?

Mr. COWAN. Five hundred and ninety-one. That is the average loaded cars on the trains which carry live stock passing out of Gainesville, the division point of the Santa Fe leaving Texas, into the Indian Territory, and the average out of Woodward, in Oklahoma, passing out of the Panhandle to Emporia, gives an average of 25 cars per train in trains that carry live stock. Those are actual facts, proven by their own records. Now, the rate states what the charge is, and there is no way to dispute it. Then take the average total operating expense per train mile on the Santa Fe system and that will only amount to $700 per train, still you have got $1,300 profit left. There is no business furnishing so large a volume of traffic moving in the same direction which pays anything like as large profit to the railroads as the live-stock business—that is, under the present rate. Now, let me call your attention——

Senator DOLLIVER. Do these cars go back to Fort Worth unloaded?

Mr. COWAN. About 40 per cent of them. Mind you, 30 per cent of other cars, which handle a grain traffic on the Santa Fe, which goes from Kansas City to Galveston, 22 per cent of the cars move back north empty. Now, I desire to furnish to the members of this committee, if they would like to have it, copies of the brief which sets forth in detail all of these figures, which, barring minor exceptions, in my judgment, are accurate. It may change your opinion in regard to the statement which has been made here that the live-stock traffic is not profitable.

Senator KEAN. I only took your own statement for it that it was profitable.

Mr. COWAN. That is what I just said. I said the live-stock producing business in 1900 was the most profitable business of the country. They say now that the railroad transportation of live stock is more profitable than the production of it.

Senator KEAN. But we are not controlling the rate on live stock.

Mr. COWAN. But if you give us a show I will show you the evidence on which we will do it if we have a commission which has the power.

Senator KEAN. You might not have the court with you.

Mr. COWAN. I am not afraid of any court on the facts.

Senator KEAN. Why not go to the court now?

Mr. COWAN. There are two very good reasons. In the first place, there is no remedy which the court could apply except the question of damages. A lawyer would be very foolish to go to a court to undertake to try a case where it consumes five weeks to take the testimony, and that is what it took in that case. Furthermore, an association of persons such as the Cattle Raisers' Association has no standing in court, but it does have before the Commission by virtue of the statute.

The CHAIRMAN. When is this case set for argument?

Mr. COWAN. On the 25th of this month.

Senator FORAKER. Is your complaint before the Commission simply that the rate is too high?

Mr. COWAN. That is all.

Senator FORAKER. It is not a complaint of discrimination?

Mr. COWAN. Now, we undertake to prove that by what a great many people call discrimination. I want to call this committee's attention to a mistake that has been made by a great many gentlemen who have testified and spoken before the committee, not purposely of course, but in my judgment accidentally, for want of proper and analytic thought. We undertake to prove that the rate from Dallas to St. Louis of 42½ cents is too high, having been increased 8½ cents in the last five years over the Gould lines, and one element of the testimony is that the rate on the Missouri Pacific from Sheridan, Colo., to Kansas City is only 23½ cents and has not been advanced, and that the rate from Scott City, Kans., to St. Louis—a little farther than it is from Dallas to St. Louis—has not been advanced, and that that is 32¼ cents. Now, you see that the rate on the same line—on the Missouri Pacific—from Scott City, Kans., to St. Louis is 10 cents per hundred pounds, or 30 per cent less than it is from Fort Worth or Dallas, a little less distance.

Now, Mr. Lincoln testified that the rates on live stock were already too low before they were advanced. He admitted that my statement that they were advanced was correct. He can not help but admit that, because it is in the tariff, but he justifies it upon the ground that they were already too low. Now, let us see. His rate from Colorado and Kansas and Indian Territory for the same distance, largely over the same line, and with a less density of traffic than there is on the Texas lines to St. Louis had not been advanced and are still lower than ours were before they were advanced. Now, some people have called that a discrimination because they ship from Scott City, Kans., at 32¼ cents, but charge you 42½ cents from Dallas. But it is not. It is simply a means of proving, if the standard of comparison is correct, that the standard is too high.

Senator FORAKER. But it is an element in the proof.

Mr. COWAN. It is an element of proof. I say that the second section in the act to regulate commerce, which prohibits undue preference, does not mean such a case as I have just named. Neither would it mean that because the Santa Fe railroad carried from Wichita, Kans., to Kansas City at a certain rate of freight, and carried from Fort Worth by way of Paris, we will say, if a line can reach around that way, and over the Frisco to St. Louis at another rate, a further distance, cheaper than the Wichita rate, that would constitute any undue preference or discrimination. It would simply constitute a difference in rate for apparently about the same service. Now, the one may be used as proof that the other is too high or too low, and then you have as the standard the comparison, but in neither case can it be said that you can adjust the one on the ground that the law prohibits an undue preference.

Senator FORAKER. They are by different lines in the case you state.

Mr. COWAN. But even if they were the same lines I do not believe it would reach it.

Senator DOLLIVER. What is gained by enlarging this power of the Commission beyond the point of determining the reasonable rate in a given case?

Mr. COWAN. Senator, after careful thought, and with no other view than to arrive at a correct solution of the matter if I could—

believing I am not capable of doing it, believing that any conclusion I might reach is likely in experience to prove wrong, and, too, with you, not as much likely, perhaps—I am of the opinion that when you give a commission the power to fix a rate which is reasonable, where it is challenged as being wrong, where it is challenged as being unreasonable, discriminatory, or unlawful, if you give the Commission the power to fix a reasonable rate there is not much else which you can safely do, in my judgment. You have asked me for that opinion, and I give it to you frankly and honestly, however much I may differ with gentlemen with whom I am acquainted and whom I esteem most highly. I know that some of the Interstate Commerce Commissioners hold to the opinion that unless they can adjust differentials the difficulties that are mostly presented to them can not be worked out and the proper remedy applied.

But it does not seem to me that it ought to lie anywhere in any commission to advance a rate, for I agree with Governor Fifer's statement, wherein he stated that you can rest it with the railroads to make their rates high enough. If they have a mind to make a rate class, they will simply have to do it. If you prevent their making a rate class, you prevent them from doing the very thing which they want to do the most, which is to carry the traffic. A rate class comes from a desire to carry the traffic. Now, will you adjust the rate so that they can not do it? Take the case of Wichita and Omaha. That has been cited. I may be wrong about this, but you asked me for my honest opinion and I give it to you. In that case the Commission ought to have the power to determine whether the Wichita rate is reasonable or not. The Commission ought to have the power to determine whether the road is justified in carriage from Beaumont, over the Santa Fe, to Wichita of lumber and to Omaha, in charging a higher rate to Wichita than to Omaha over the same line and in the same direction, the same class of traffic, and carried at the same time.

And the fourth section ought to be so amended that the Commission may do that and determine whether the circumstances are so substantially different as to warrant the higher charge for a lesser haul.

Senator FORAKER. Is not the Commission authorized to do that now?

Mr. COWAN. No, sir; I think not.

Senator FORAKER. Under the interpretation of the statute?

Mr. COWAN. I think not. I have read those decisions most carefully, and my construction of Judge White's last opinion is that, as a matter of law, if there is competition at the farthest distance in any degree whatever as it is at the near-by point, that creates, as a matter of law, a substantially different set of circumstances and conditions. That is my construction of that decision. Commissioner Knapp, am I correct in that interpretation?

Mr. Commissioner KNAPP. Substantially right; yes, sir.

Senator FORAKER. That is, any degree of competition would justify any degree of difference in rate?

Mr. COWAN. Any degree of difference in rate, provided, of course, that the first section prohibits a rate which is unjust and unreasonable, so that the party at the near-by point, at Wichita, could not complain that there was a lower rate to Omaha, unless they could

prove that the rate to Wichita is not a just rate. Under the present construction of the fourth section, I think that is the law, but I think the law ought to be as the fourth section was formerly construed by the Commission, at least, that it does not matter whether the rate from Beaumont to Wichita is reasonable or not. If they have a mind to make a lower rate at Omaha, they must not charge more than to Wichita, the shorter distance. So that, if you give the Commission the power to determine the circumstances under which the shorter distance haul may take the higher rate and give them the power to determine and cut down an unreasonable rate, you will have done all that you can do, substantially, for the relief of the public.

Senator FORAKER. I do not believe I understand you, Judge. I do not interrupt you for any other purpose. You think the Commission ought to be empowered to investigate and determine what the difference in conditions may be, and to determine whether or not the measure of difference in conditions accorded with the measure of difference in the rates?

Mr. COWAN. Well, I will answer in the affirmative to the proposition, but not subscribing entirely to the form of the question.

Senator FORAKER. I did not mean to put it in any particular form.

Mr. COWAN. And that is the reason I answer it in that way. It is perfectly impossible to adjust any one rate to conditions. There is no mathematical sequence between them. It is not possible to adjust one rate mathematically to another because there is no exact logical sequence between them. The best you can do is the exercise of a fair, enlightened judgment to the tribunal to which you give the power, trusting in their judgment for a careful, proper, patriotic enforcement of the law with a view to protect the rights of everybody.

Senator FORAKER. What would you suggest that the amendment should be?

Mr. COWAN. I have heretofore at the request of this committee carefully prepared, and I handed to the committee in February, a statement of what I think the amendment ought to be, and that is included in my previous statement.

Senator FORAKER. You are still of the same opinion?

Mr. COWAN. Absolutely. I have not changed one whit. I do not see anything different in regard to the short and long haul clause.

Senator CLAPP. What is the number of the volume containing the case which you referred to a moment ago?

Mr. COWAN. Do you mean Justice White's decision?

Senator CLAPP. Yes, sir; the Wichita Case.

Mr. COWAN. I was not referring to Justice White's decision in connection with the Wichita Case, but the Nashville Case. I will find it for you, Senator, before I leave here, and furnish it to you.

Senator FORAKER. Just put it in the record when you get it.

Mr. COWAN. Now, Justice White held also—mark this now, gentlemen, if you please—that in view of the fact that the fourth section contained a proviso under substantially similar circumstances and conditions, that that in effect is an affirmative statutory rate of much less for a longer distance haul that a shorter distance haul, if those circumstances existed. And therefore the third regulation which

prohibits undue preference was by the fourth section limited so that it was not an undue preference there if it was permissible under the fourth section.

Mr. KNAPP. If it is not unlawful under the fourth it is not under the third section.

Mr. COWAN. In other words, the third section can not apply if the fourth does not. I mention these things in order that I might reach another point that I am to present to you, and that is the Elkins law, which prohibits not only rebates and discriminations prohibited by law, but may not reach near as far as some might have you believe or you might mistakenly suppose. It does not say discriminations prohibited by the common law or by the act to regulate commerce. It simply says, "discriminations prohibited by law," and gives the courts a plenary power of an injunction against such a discrimination.

Senator CLAPP. Invoking that decision to sustain a conviction brought under the interstate-commerce law, the courts, at least by enforcement, made it apply to the provisions of the interstate-commerce law, did they not?

Mr. COWAN. No; I think not.

Senator CLAPP. It seems so.

Mr. COWAN. I know that opinion is held here, and I have heard statements and questions back and forth. I say it in all good feeling, of course, that some of you have made a mistake in believing that it does.

Senator FORAKER. The remedy reaches as far as the law reaches in its prohibitions?

Mr. COWAN. Yes, the remedy reaches discrimination prohibited by law. But what is a discrimination? You reach right back to that point the first thing. Mind you, they did not do it in the Missouri Pacific case, because they alleged affirmatively a discrimination in terms to reach a discrimination in violation not only general but in violation of the provisions of both the Elkins act and the interstate-commerce laws. The case came up on demurrer and the question was whether the allegation of the petitioners gave the court jurisdiction, and they held that it did. I am disposed to think if you would take a case to a court of equity jurisdiction, of a discrimination, the court could do whatever is necessary to effectually invoke the remedy, no matter what the decision was. That is intimated in the dissenting opinion of Justice Brewer, but it is in conflict with the Maximum Rate Case. It would not do to rest this remedy on the uncertain proposition on which the Elkins act rests it. In the Maximum Rate Case they held that instead of giving the power to the Commission to enforce the provisions of the act it did not give them the power to fix rates. In other words, there was no extension to the power by construction and, it seems to me, his dissenting opinion was apparently in conflict with the Maximum Rate Case. I would not like to stop and discuss that case, Senators. I do not claim to be informed concerning it.

Senator FORAKER. That is a very important statement to make, and on which, on first impression, I would not feel disposed to agree with you. I do not see that there is any conflict between the two decisions.

Mr. COWAN. I say intimations in Justice Brewer's dissenting opin-

ion in the Missouri Pacific Case indicate that the court would assume the complete power to adjust a rate, as I understand the decision. But I have not thought best to undertake to discuss the decision itself.

Senator DOLLIVER. That also appears in the decision of the court?

Mr. COWAN. A clear intimation to that effect. But do not overlook this, that there was an allegation there and a demurrer. Now, if we should be mistaken and suppose that the court was going to apply the Elkins Act to the undue-preference clause or to the second clause against discriminations or to the third on the long and short haul, and the court did not do it, then we would be without the remedy. In no other case can the Commission invoke the power of the court, except it has reasonable grounds to believe the law has been violated, and thus bring prosecution. Why not? Just go a step further, in order to save any controversy about that, and when you give the Commission power to determine what a reasonable rate is give the Commission the power to determine to what extent there is a discrimination. But when you go and give the Commission the power to raise or lower rates you give it the power to destroy the commercial conditions in the country.

Senator DOLLIVER. Could we constitutionally confer that power on the Commission, or exercise it ourselves—namely, the power to fix a minimum rate or to raise a rate?

Mr. COWAN. I think the Attorney-General answers you in the affirmative.

Senator DOLLIVER. I do not understand that he does. I wish you would show what there is in his opinion to that effect.

Mr. COWAN. He holds that we can establish a maximum rate.

Senator DOLLIVER. Do you not recognize the difference as a legal proposition between fixing a maximum rate and a minimum rate?

Mr. COWAN. Not under the Constitution of the United States. You do it by virtue of the power to regulate commerce, and one is a regulation as much as the other.

Senator DOLLIVER. Why does he limit his opinion to the right to fix a maximum rate if he can fix any kind of a rate?

Mr. COWAN. I wondered at that when I read it.

Senator DOLLIVER. Do you not think he must have had some good reason for that?

Mr. COWAN. I think it was a piece of caution. Lawyers do not generally go further than is necessary. He may have had the best sort of a reason. I can not see how, if the power to fix a minimum rate exists theoretically by constitutional provision to regulate commerce, that the regulation does not apply just as well to the minimum as to the maximum. I may be mistaken, but it seems that way to me.

Senator KEAN (in the chair). Mr. Cowan, your time is very nearly up.

Senator FORAKER. I would like the Judge to finish his statement. It is very interesting to me.

Mr. COWAN. I will not detain you but for a very little while.

Senator KEAN. You may proceed, Judge.

Mr. COWAN. Now, it seems to me that this sort of a case illustrates better what will come than to try to reason from some general principles back to specific instances. The Interstate Commerce Commis-

sion held in a case recently decided by them that the rates on freight or livestock from points intermediate between Missouri River and Chicago, in Iowa, ought not to be greater per 100 pounds than the rates on freight on the dressed carcasses of that livestock from the Missouri River and farther distant points and over the same lines to the same destination. The opinion seems just. I assisted in the trial of the case before the Commission, representing the Chicago Live-stock Exchange.

Senator FORAKER. Is that the case where Governor Cummins was on the other side?

Mr. COWAN. No, sir; he was not in the case at all. I insisted that the Commission should also find whether the 23½-cent rate from Fort Dodge, Iowa, was, in addition to being an undue prejudice against the live-stock shippers, an unreasonable rate. The Commission decided, however, that they would only determine the relative rate under the third section of the act, and they held that to charge 20 cents locally and 18½ cents in fact on packing-house products and dressed meats from the Missouri River to Chicago, 500 miles, was an undue preference, and an advantage to the shipper of the carcass as against the live-stock shippers on the same line intermediate between the Missouri River and Chicago. And the railroads refused to obey that order. Now, I do not know that it is true, but I heard that they held a meeting in Chicago and by a vote of 1 determined not to obey the order, on account of which, I am informed, the Commission has brought a bill in equity in the circuit court of Chicago to enforce that order. Now, you may see where the point comes in. One of the defendants in that case is the Chicago, Milwaukee, and St. Paul Railroad. Mr. George R. Peck represents that road. Now, I think he said here, at least my memory tells me that he did, that an injunction would lie under the Elkins bill to restrain a rate which created a discrimination by being a preference between localities. Is it correct that he took that position here, Senator?

Senator DOLLIVER. I think so.

Mr. COWAN. I so understood it. Now, I want to win a suit of clothes, as I need them, but I do not want to offer to do any unlawful act here. However, I am willing to bet a suit of clothes that Mr. Peck takes an opposite position in Chicago, and that he will argue that the Elkins Act does not reach the third section at all, because it prohibits undue preferences and advantages and any discriminations in the meaning of that term as stated in the Elkins Act. I will be in that case, and I am going to urge it upon the court that Mr. Peck's opinion before this committee was correct, and that an injunction should reach it as a discrimination, but, at the same time, I scarcely believe that that is the law. Now, if it is, let us see what they would do. That is the point I am trying to come to. What will the court do? The facts in the case are that the Chicago Great Western Railroad made a written contract extending over a period of seven years with the packers on the Missouri River to not ship the freight at that rate. All the roads had previously given the packers those rates, and probably lower, and they admitted that, but that was by reason of the rebates. The published rate had been the same as the live-stock rate. All the railroads—at least the Great Western can not recede from its contract. It can not say its con-

tract was unlawful and break it, and it does not wish to break it. It wants the traffic. The other roads can not afford to cancel their tariff, because if they do the other roads will get all the traffic, and so they must maintain the lower rate from Missouri to Chicago. The question is, Is the Iowa cattle shipper to be given the same rate by injunction of the court or not? If you believe the court has the power of granting injunctions, it will have the injunction of the live-stock rate. If so, then the court must fix a rate. Now, I hope for the good of the country that that is the law. I hope that such a jurisdiction exists, but I do not believe in view of the decisions of the Supreme Court of the United States that they will ever reach the conclusion that the court may by indirection establish a rate for the future which the law could not give them the right to do by direct enactment.

Senator DOLLIVER. Then you and Mr. Peck will both be under a similar handicap before the court?

Mr. COWAN. I will be advocating something that I do not believe to be the law, and so will he, if you accept our statements before the committee as representing our belief. I mention this thing thus specifically, in order to point to the desire that this committee can extend to the Commission the right itself to determine what ought to be the relation in these rates. But I do not believe that it is a good idea to give the Commission the right to raise the rate, but to reduce the other one if the long and short haul applies or if the other rate is unreasonable. Therefore, I wanted the Commission to decide, which I think it believed upon the facts, that the 23½ cent rate was unreasonable, whenever there would be two strings to the bow.

Mr. Lincoln called the attention of the committee to a damage case that was tried in Kansas, where a judgment was rendered for $11,000 against the Missouri Pacific. He made the mistake of saying the cattle were only on the cars eight hours. I tried the case myself. He was a stranger. It was tried before the United States court. The company paid the judgment without taking an appeal. The facts of the case will somewhat interest you, because it illustrates a case of the worst kind of gross negligence. Mr. Lincoln thought that they would have the right to raise the rate to cover such a case as that. The advance on a cattle shipment does not amount to more than a dollar on a car on the average.

Now, I want to call your attention to one point, and that is that the rates of revenue per ton per mile is in no sense expressive of what the rate is. I have undertaken to set out, in the documents I will file, a statement showing that. One road has increased and another has decreased, and so on. There are a thousand reasons, I believe a thousand, at least, where the revenue per ton per mile does not reflect the amount of rate. Some members of the committee seemed to have been taken with the idea that because the average revenue per ton per mile had shown a decrease that therefore the rate had been decreased. I met the assertion when before the committee that the test of whether rates had declined or not is the tariffs. Look at the tariff; that will tell. No railroad witness has produced a tariff, that I know of, to show that they have declined. The rates for the last five years, on the contrary, have advanced.

Now, as regards the long haul, you increase the ton mileage. You obtain the revenue per ton per mile by dividing the gross revenue receipts by the total ton-mileage. As you increase the long haul you increase the ton-miles. As you increase the lower grade of freight you increase that character of tonnage which takes the lower rate.

So it will always occur that there will be fluctuations. For example, the Atchison, Topeka and Santa Fe between the years 1898 and 1904 had an increase in the revenue per ton per mile. The Chicago, Rock Island and Pacific, which covers the same territory, had a decrease. Yet there is the very process by which these gentlemen have proven that the rates have declined. They have added all the railroad freight ton mileage together and charged all the railroad freight earnings together, and divided one by the other, and come up and present that to you as a proof that the rates have declined. I have undertaken to set that out.

Now, there is another point, and that is that they say that you should leave it to the railroads to do with the public as they will, because it will reduce rates as they have been doing. I say the evidence they have produced of reducing rates does not prove up, because that is the only testimony I have seen, and I undertake to say that the tariffs show the other thing.

Now, they say that there is no combination. I think Mr. Hines testified at length about that. I know that several of the other traffic men denied it, but if you take the facts which are pointed to in this statement which I am filing, you will find that the proof shows exactly the other thing, and I believe they ought to have the right to do that. I could read to you out of the brief here, which has an exact copy of the testimony which proves it. I will hand copies of the brief over to the committee, and therefore I will not take the time at this moment to discuss it further.

Now, I believe that you can only legislate the rates. Litigating the rate is nothing. How can a man come up here and try a case like the one the cattle association have tried? It took five weeks to take the testimony, and it cost thousands of dollars, and it was very difficult to get the testimony. The individuals are at a great disadvantage. Here is a room full of railroad attorneys, smart fellows, and here are the witnesses, with all the money they want, to perform any service they desire. They keep in their offices the records and books, and they can produce just such as they please; you can not get the testimony. You do not know what to propound. You propound your questions, and they will not answer unless they want to. They will tell you, "I will not answer it. I will go to court and I will fight it out with you."

But you can not afford that. I say this Congress should provide for legislating the rate. That is, as Commissioner Knapp well said yesterday, you fix the obligation, the rule of conduct, in the law, which carriers shall observe, and you provide a commission with the powers to require the thing to be done by naming the rate they shall charge. Leave it at that, because if the rate is an unreasonable one, then the court will review it upon application in equity without a question.

Senator DOLLIVER. Will it review the question of reasonableness?

Mr. COWAN. Undoubtedly, for the purpose of determining whether

they are taking property without due process of law or whether it is confiscatory.

Senator FORAKER. Suppose we find it is not confiscatory, but simply a different rate than the court might have found, would it then grant any relief?

Mr. COWAN. Yes, sir. I answer that in the affirmative, in my opinion. I do not believe the time has been reached in this country when any court having the power to do so will ever say that you can require a person to perform a service without a reasonable compensation, because that is not due process of law for you to authorize a commission to do that.

Senator FORAKER. Let me ask you a question? Can you cite us to any decision of any court where it is held that a price fixed by law for any commodity furnished for transportation of cattle or anything else should be enjoined, except on the ground that it was confiscatory.

Mr. COWAN. I can.

Senator FORAKER. Where is it?

Mr. COWAN. The Nebraska Rate Case fairly indicates that the court will determine whether the rate is made below what is reasonable or not, and I do not understand that they ever did base the case necessarily upon the ground of confiscation.

Senator FORAKER. To what case do you refer?

Mr. COWAN. The case of Smith *v.* Ames.

Senator FORAKER. I am familiar with the case.

Mr. COWAN. Have I made a mistake in stating that case?

Senator FORAKER. I think lawyers would have a difference of opinion about that.

Mr. COWAN. I admit it was not necessary to the decision of the case, in view of the admitted facts, that the court should have gone further than to simply say that the rates being confiscatory, they would enjoin them, but I think the court in its expression of opinion about the matter, in discussing it, went a great deal further. I had discussed this matter several times with Commissioner Prouty. I do not know that he expressed himself in this line before this committee, but I do know that he had been supposed to hold to the opinion that the court would not hew to a hard and fast line of confiscation before they would grant relief. But if it was such an outrageously low rate that it would shock the conscience of a chancellor, it would be enjoined—and you know the conscience of a chancellor is easily shocked.

Senator DOLLIVER. It has always struck me, Judge, that there was a tremendously wide margin there between what the common law means by a reasonable rate and a rate which would confiscate the property.

Mr. COWAN. There is no sort of doubt that there is a very wide margin between those two factors.

Senator DOLLIVER. It would seem to me that there ought to be an earning of dividend upon the stock, and there ought to be a provision for the accumulation of such a surplus account as all good business requires, and a great variety of things beyond the point of due process of law.

Mr. COWAN. Speaking of what they ought to be, I agree with you,

except on the proposition that there ought to be a dividend on the stock. That may or may not be so, on the value of the property. Of course the stock can be issued far beyond the value of the property; that is what I mean. I believe the present courts, under the equity jurisdiction, would exercise the power to restrain the Interstate Commerce Commission from fixing such a rate as would prevent the company from earning a fair profit upon the transaction. Now, I believe that because of the disposition of the courts to extend the jurisdiction. I do not believe it because they have so decided. I think it would be unwise for this committee to pass a bill affirmatively charging the court with the duty of doing that thing, because if you do it will substitute its judgment for the Commission and your Commission will be worthless.

Senator FORAKER. Of course, that is just the point of the whole thing. Unless it be a confiscatory rate the courts may differ as to what would be confiscatory. The court would have no power, according to the authority with which I am familiar, to interfere with the rate, it having been fixed as an act of legislation.

Mr. COWAN. I concede that that is the appearance of the decision. I concede that is the sanction of many lawyers. I have held to that opinion myself until within the last year, but in rereading these decisions and considering the whole subject I have come to the conclusion that if it would ever come to a test the courts will do the other thing.

Senator DOLLIVER. The Esch-Townsend bill seems to provide for referring to the court not only on the lawfulness of the act, but also the reasonableness.

Mr. COWAN. I sent my criticisms on that bill here. I think that bill would be practically worse than no law at all. I know a great many think otherwise, but if you transferred a retrial on the facts, like the case I have tried before the Commission, I would not give a snap for the law. It would be obnoxious and harassing to the railroads——

Senator FORAKER. You would not advise us to act favorably on the Esch-Townsend bill?

Mr. COWAN. No, sir. I filed a protest here because I believed it was an injurious measure.

I want to submit, in connection with my statement, a statement showing the earnings for seven years on the Santa Fe, its operating expenses, and the like, for the purpose of showing that after paying a dividend on its stock, the interest on its bonds, on a capitalization of almost twice its value, they had $5,000,000 of surplus, and I think there is not the slightest danger that the labor organizations of the country need fear that because the Santa Fe rates were somewhat reduced that they can not take it out of the surplus and still pay just as good wages as they have been paying before. I will file that as part of my statement.

It is as follows:

SOME FACTS WHICH SHOW THAT RATES SHOULD BE REDUCED.

I happen to have some figures which are of interest pertaining to some of the principal live stock carrying roads, and from which the conclusion may be drawn, that instead of an advance in rates being justified, the contrary is true. I give one example which faintly illustrates the case: For 1896 the Atchison,

Topeka and Santa Fe Railway Company carried 311,197 tons of freight 1 mile per mile of line, with average car loading of 10 tons, and train loading of 126 tons. In 1898 it carried 430,640 tons, 1 mile per mile of line, with average car loading of 11 tons, and train loading of 153 tons, earning 9.64 mills per ton per mile, 10.60 cents per car mile, and $1.47 per train mile. In 1904 this road carried 589,216 tons 1 mile per mile of line, with an average car loading of 14 tons, and train loading of 249 tons, earning 9.81 mills per ton per mile, and $2.45 per train mile.

Thus the tonnage per mile of line of 1904 shows an increase over 1898 of 36.8 per cent, and over that of 1896 of 89 per cent, with an increase in freight revenue per mile of line of 39.2 per cent for the year 1904 over 1898.

The system's earnings since June 30, 1896, were as follows:

Year ending June 30—	Gross earnings from operation.	Same per mile of line.
1897	$30,621,230	$4,752
1898	39,214,099	5,633
1899	40,513,498	5,760
1900	46,232,078	5,760
1901	54,474,822	6,977
1902	59,135,085	7,527
1903	62,360,397	7,827
1904	68,171,200	8,334

To this should be added income from other sources, which for 1904 was $1,248,775, bringing the total income up to $69,419,975, from which deduct operating expenses, rentals, taxes, and other charges of $44,641,434, leaving net income of $24,778,541. Deducting from this the fixed charges, including interest on bonds, the net remaining was $15,359,771. This is on a mileage of 8,119 miles. On this the interest charges paid on a bonded debt averaging $29,175 per mile was $1,179 per mile of line, or a little over 4 per cent, leaving $1,873 per mile as a surplus. During that year there was expended and charged in the operating expense account, under the head of maintenance of way and structures, $1,121 per mile of line, which embraced at least $200 per mile; average expenditures for betterments, or, if not for betterments wholly, then the expenditures for that item was abnormal, as $900 per mile is a normal and sufficient amount on the average to maintain way and structures. The maintenance-of-equipment account, including renewals, was also abnormally large, amounting to an average of $1,223 per mile of road, which undoubtedly embraces large items for additions in value to the equipment. Certainly the item is abnormally large, as is indicated by the fact that the Chicago, Milwaukee and St. Paul Railway Company's expenditure for maintaining equipment for the same year amounted to $673 per mile, carrying a very little less tonnage per mile of road, and the Chicago and Northwestern Railway expenditures from the same item per mile of line for 1903 was equivalent to $656 per mile, for a little less tonnage per mile of line. It is readily observable, therefore, that the net surplus of $1,873 per mile should be increased by the amount expended for betterments and additions, but included in operating expenses, of probably not less than $500 per mile, equivalent to over $4,000,000, and running the net surplus up to $2,373 per mile average. Thus, after paying interest on bonds, dividends of 5 per cent on preferred stock and 4 per cent on common stock, the surplus of the year was $5,573,201, together with whatever betterments and additions were made and charged in operating expenses above shown. The interests and dividends were paid on a total capitalization per mile of line of approximately $58,000, which is far beyond the legitimate cost or fair, tangible value of the property.

When you consider that there is embraced in operating expenses adequate, if not sometimes exorbitant, compensation for every expense, and to pay for every hand's turn and every thought expended in the company's operations, you can arrive at no other conclusion than that there not only does not exist any basis for advances on rates, but that they should be reduced. On an estimated valuation of $30,000 per mile, which is a high estimate for average value, the net earnings reported, besides betterments, equal to 2 per cent, amount to 10 per cent per annum. If the railways of the United States may earn that net, year after year, they will in fifty years absorb most of the

wealth of the United States and dominate the entire business and finance of the country. What is true of this system of road is, in the main, true of all the great systems in the West. It is a fair sample, and selected on that account. Now, in view of this showing, and the fact that the country is growing and traffic increasing, is it not plain that there is no danger of any commission so changing rates that a fair earning will not at all times be made? Does it not thus clearly appear that the hue and cry against regulation is born of the desire to accumulate more than a fair return rather than any fear that their earnings will be reduced below a fair return? Does such showing justify the railroads in predicting that if rates are reduced wages must be reduced? Really, that is a mere ghost story to conjure with.

PROFITS IN CATTLE SHIPMENTS TOO GREAT.

As a whole, the railroads are making too much profit, and their rates are generally, therefore, too high. This fact needs no better proof than the assertion of all the railroads that their property will be ruined and that the widows and orphans, who receive dividends on stocks, will be deprived of it if the Commission be given power to fix rates. Why will this great reduction happen? The Commission has always been fair and will continue to be. I will tell you: It is a confession that the rates and earnings are too high, and will be found so when brought to the test before a fair-minded tribunal—which they expect to treat as an enemy, as they always have every commission which they can't control—because it limits their money getting to what is fair. "A guilty conscience needs no accuser." The more you study this Commission the more it proves the necessity for the law. It ought not to lie in their mouths to say that they are not charging too much, and at the same time predict disaster if the Government regulates the rates to what is just, fair, and reasonable.

But the most material question for you is whether it is too much on your business. Let us see. A train from Denver to Omaha, carrying live stock, will average, approximately, 25 loads or its equivalent, so we may treat it as 25 loads of cattle, and they will average in weight paid on 25,000 pounds total earnings $2,062.50, equal to $4 per train mile, 16 cents per car mile, and 13 mills per ton per mile. The average earnings on the Burlington system—all freight—are, per train mile, $2.44; per car mile, 12.87 cents, and per ton mile, 8.58 mills. It may be that if ideal conditions existed, so that they could always load trains as they would like, a possible heavier train loading of dead freight than live stock could be made, but in actual practice the records show just the opposite—that is, that in the West the average of trains carrying live stock show more loaded cars than those which do not carry live stock. The average total of operating expenses of railways equals $1.16 per train mile, making $593.90 from Denver to Omaha, leaving a profit of $1,466 on the 25 cars to Omaha. If the shipment is taken off the Denver and Rio Grande Railway, it is carried on from Denver at 39 per cent of the rate, say, from Rifle, which is about $83 per car, and the earnings in such case are approximately $820 per train. While this is an extreme case it is nothing unusual for the roads to take live stock on a division of the rate at 50 to 55 per cent of the amount of the local trade. We do not say that the local should be based on the division, but there must be a profit in the division voluntarily accepted, indeed solicited, and if so, the local is too high, just as in the Denver case. Our point, therefore, is that a fair tribunal shall be given the power by law to arbitrate the question, so to speak, between the shipper and the carrier. Is that asking too much? Does that look like destroying anybody's property? The railways are willing that it may be arbitrated, but they are unalterably opposed to the arbitrating board deciding what the charge ought to be, and insist that the railways alone are competent to do that.

I thank the committee for its attention.

The object of my appearance before you is to offer such additional matters of fact and argument as seem to me important in addition to my previous statements, avoiding as nearly as I can duplication, though it will be impossible to do that altogether. In doing so I shall endeavor to furnish without extensive mention answer to some extent of many of the contentions of the railroads made before you at this session of your honorable committee.

I have no doubt that the opinion of the Attorney-General will be accepted by this committee, and it seems to be a reflection of the consensus of opinion of the courts and the bar of the country, and therefore I beg to avoid any discussion by simply subscribing to the views he so well expressed and the specific amendments to the act to regulate commerce which I presented to you at the last session.

THE PEOPLE DEMAND APPROPRIATE REGULATION.

That the subject before you is fraught with many difficulties there is no question, and as the commerce of the country and public facilities increase those difficulties will increase.

No one intends to ask for more than reasonable and appropriate relief, and if railroad regulation is provided for now it will result in avoiding greater difficulties which without it will certainly come in the future. What I shall say about it is without the intention of personal criticism, and I intend to be conservative, but not in any sense to advocate any compromise. It can not be compromised. You either grant the relief or you do not; and you give the Commission the power to fix proper rates for those found to be unlawful, or you do not. There can be no halfway measure. For practical purposes, if not for constitutional objections, the power should not be in courts.

The fact that so many railway men have appeared before this committee and but few representatives of the producers and consumers' interests have made application to appear, should not be mistaken as proof that the people are not materially interested in the subject, nor as indicating in any sense that they do not desire the legislation which I will advocate before you. Don't forget that producers and consumers "pay the freight." They depend on their representatives rather than on merchants.

LIVE-STOCK INTEREST PRACTICALLY A UNIT FOR REGULATION.

I state it as a fact that the live-stock associations throughout the West have this year adopted similar resolutions to those I present here, and they have been adopting these resolutions for several years, as the files of this committee and those of the House Committee on Interstate Commerce will show, apparently all to no purpose. I say that it is known to each of you who have taken the pains to read the public press upon the subject from that part of the United States engaged in the live-stock business, that these resolutions voice practically the universal sentiment of the people upon the subject. There are, indeed, a few individuals who may be receiving or expect to receive some special benefit of one sort or another from the railroads, or by reason of some special relation of friendship, or who happen to be located at points where the rates may be much lower than the usual rates, who do not hold to the opinion expressed by these resolutions. But if you desire to find such persons you will find great difficulty to do it. It is the desire of the live-stock men throughout the Western States to have this law amended. I know what I am talking about, and when anyone says there is no popular demand for it he is mistaken.

It is astonishing to hear it stated that there is no popular demand

for this legislation and that the shippers are satisfied. They might say that some shippers are satisfied.

PUBLIC OPINION CLEARLY FAVORS RATE REGULATION.

The legislatures of many States have during this calendar year passed resolutions demanding this legislation; the Association of State Railway Commissioners have done the same; so has nearly every producers' organization in the country, if you will exclude certain wholesale merchants, manufacturers, and so-called "trusts," who can generally add the rate of freight to the price of their goods, or who are enjoying special low rates or valuable privileges, and if you exclude a few boards of trade and commercial organizations whose members are enabled to do the same thing, and a few localities like San Francisco, which enjoys unreasonably low rates compared to the rates to other commercial points in the great West. Of course the favored ones desire no power to molest them. The public press has voiced public sentiment upon the subject. It is my belief that President Roosevelt has the indorsement of the entire country in the West and Southwest, excepting those adversely interested as above indicated.

These railroad men seem in their statements before you and in producing these various witnesses to be carrying out the policy adopted because of the growth of public opinion as expressed in a dispatch sent out from Chicago, which I herewith submit, viz:

CHICAGO, ILL., *April 28.*

Presidents of western railroads, alarmed by the growth of public opinion in favor of Federal control of rates, have appointed Slason Thompson and given wide authority to employ experts to enlighten the public on the dangers of governmental interference with rates. No expense is to be spared in this campaign of education. This is following the lead of the eastern roads, which recently established a bureau under the management of J. H. Maddy, press agent of the Erie Railway.

In a sumptuously fitted private car, Mr. Maddy and his able lieutenants will travel from New York to Chicago via the twin cities to the Pacific coast, visiting all cities of importance and spreading the gospel of permitting railroads to cope with their own business, in the light of many years' experience. rather than turn it over to politicians, lawyers, and statesmen, who know nothing about railroads.

There is a serious concern among railroad men over the sentiment in the land. One of the western presidents admitted to-day that it had become a matter of life and death for the railroads, and that they would spare neither expense nor effort to protect their property and interests. (Dallas News, April 29.)

They have the right to do this if they don't charge it to the public in operating expenses. I mention it in order to suggest that their statements be weighed in light of these facts.

If this committee desires it I can produce enough witnesses who are extensively engaged in shipping throughout the West to take the time of this committee from now until the next session of Congress, to prove that the enlightened public sentiment, not mere clamor, is practically universal in support of what I am contending for before this committee and in line with the resolutions which I have submitted, but it would seem to be unnecessary to do it, unless this committee is to base its action on that fact rather than on the needs of the public. I am sure it will be guided by the latter.

In what I shall say before this committee I am speaking of meas-

ures, principally, and not men. I am not making contentions before this committee that the opinions of railway men that no such legislation should be adopted are dishonest opinions, although the sincerity of much of it may be quite doubtful. These opinions are open to the criticism that they are warped and biased opinions of those who desire to profit at the expense of the public without regulation by law. I do think that their fears of wreck and ruin are woefully exaggerated and groundless, otherwise I should not favor the legislation.

THIS COMMITTEE NOT THE TRIER OF THE FACT AS TO WHETHER RATES ARE UNREASONABLE OR UNLAWFUL.

I shall disabuse the minds of the Senators of this committee of the idea, if such they have, that it is my purpose to undertake to try the question before this committee as to whether the live-stock rates and other rates in the territory in which my clients do business are unjust or unreasonable, or otherwise unlawful. I only intend to present facts which tend strongly to prove that such is the case. I have no idea that this committee believes that, as a condition precedent to the granting of relief, the extraordinary requirement should be made to prove to its satisfaction that the rates generally are wrong. It ought to be sufficient to invoke legislative action to the end of providing a remedy, to show that a considerable number of people believe that the law which denounces unjust, unfair, unreasonable, discriminatory, and preferential rates is being violated; and that should induce this committee to grant the remedy, and a simple, adequate one, in order that a proper tribunal provided by law shall determine the facts.

It looks like a piece of monumental stupidity to have a law such as we now have, which denounces as unlawful, and which in theory prohibits, such rates, and yet not provide a remedy whereby any citizen of this country who believes that a given rate violates those prohibitory provisions of the law can have that fact determined fairly, promptly, and a speedy and adequate remedy applied at Government expense. And if it shall turn out that the mere desire of those who violate the law prohibiting unjust and discriminatory rates, coupled with their opinion that they have not violated the law, is sufficient to induce this committee not to act in the premises, it were high time that fact be known, in order that such action may be taken by the public as seems best.

OUR DEMAND NOT BASED ON CLAMOR.

I know, and the people whom I represent know, that legislation should not be based upon mere popular clamor without reason; that careful investigation by you should be made; but I assert that the public stand in amazement at the publications in the press which charge this committee with the intention in this hearing of laying the predicate, based upon the opinions of railway men, and recipients of advantages, to report no bill or only such as will amount to nothing. I can not believe such published statements, nor do the people whom I represent generally entertain such opinions, though doubt-

less some of them do. Undoubtedly articles in the public press have a widespread influence in molding the sentiments and beliefs of the public, but men are not always fair in the expression of their opinions about public men. This is to be deprecated, and I mention it only because I want to assure this committee that those whom I represent are not generally of that sort, but among the most substantial, conservative, and intelligent men of the United States, generous in their impulses, charitable in their opinions, conservative in their actions, and I believe I can speak for them in saying that not until the proof shall be made that these charges are correct will they subscribe to such opinions. Your report is what they will look to. I further desire to assure this committee that the demands of those whom I represent are not based upon popular clamor, but are the result of an intelligent opinion and well founded belief that many of the rates enforced by the railroads are unjust, unfair, unreasonable, discriminatory, and unduly preferential. If they are, the law now denounces them. What we want is a remedy whereby a rate for the future may be made.

I believe that the railroad representatives who are acquainted with the live-stock producers of this country can not honestly deny the statement that the people whom I represent have always been the first to respond to their aid against public clamor. They have stood against strikes, riots, and socialism; they have not been in favor of unreasonable and radical legislation. They are of that sturdy class of citizenship who can always be relied upon for good government, law and order, and a square deal, and always above the table, in order that all the players may know that it is square. The time will surely come when the railroads will need their assistance and protection. As citizens they stand as ready to protect the railroads' rights as to demand their own, and they don't hesitate to do either.

OPINIONS OF RAILROAD MEN THAT RATES NOT TOO HIGH SHOULD NOT CONTROL.

So far as I have been able to read the reports of the hearings before you, the railway representatives have dealt largely in generalities; and while they practically all express the opinion that none of the rates are too high, and many of them that no complaint is made against them, these opinions, coming from the party interested, are of little value unless supported by the detail of actual facts. Wharton on Criminal Evidence says that no theory, however absurd, can be advanced which some so-called expert witnesses will not maintain it with vehemence, and that they nearly always testify favorably to the side which calls them. May this not be applicable here? Therefore, instead of placing before this committee the mere opinions of shippers with respect to these matters, we call attention to the actual facts, to show at least we have reasonable grounds for the belief that the law against unreasonable and otherwise unlawful rates is being violated; and there can be no doubt of the proposition that if we do have such reasonable grounds, then it is the duty of this committee to report a proper bill giving us a remedy, leaving it to the tribunal provided by law to try the ultimate facts. You do not make laws against crime of any sort because everybody commits the

crime, or because they are likely to do so; but you pass prohibitory laws and grant remedies in order that the few who commit the crime may be punished, and in order that all against whom the injury is done shall have an appropriate remedy. You do it in order to prevent wrongdoing. You do not decide that anyone has committed an offense by passing a law to punish those who may commit it and to prohibit the offense. It is quite beyond the pale of reason that the railroads should conclude that a law which provides a remedy against wrongdoing would be antagonistic to their legal and constitutional rights merely because exact justice might not always follow its execution. It will only prevent and punish the wrong and protect and preserve the rights of others by appropriate remedies, like other laws, occasionally failing to reach exact justice.

If we may judge from the opinions which they have expressed to you, the railways now believe that they are entitled to every cent they make, and therefore expect to themselves name the standard. Will the time ever come or the conditions ever arise, however much their earnings increase, when they will express to you a different opinion? It is safe to say that if we wait until such occurrence before passing a law which provides some other method of finding what is right with respect to their rates than their own desires, no law will ever be passed.

The expression of opinion on their part that their business and rate adjustments and the charges which they make are so complicated that a tribunal can not be provided by the Government that can do justice in the matter, and that therefore they themselves should still be permitted to deal with the subject as they see fit, is equivalent to the proposition that they must be permitted to fix their own standard. In other words, to make the law for themselves and administer it, by leaving this function of government in their hands.

INCONSISTENCIES AND UNFOUNDED STATEMENTS RELATIVE TO EXISTING ABUSES, THE LAW, AND REMEDIES.

One who will study the many inconsistent if not unfounded statements which have been placed before you in light of reason and the actual facts is likely to be impressed with the idea that at last there may not be that degree of candor which it is always desirable for a legislative committee to have from the citizens of this country appearing before it. I desire to call attention to a few of these points.

The statement has been made by several of these witnesses (I do not care to call names) that there is little or no complaint against the amount of the rate, but that the complaint has been with respect to rebates and discriminations which they say do not exist, and in this connection the assertions have been made that unreasonable rates have disappeared, and the like.

I am impressed with the thought that since they benefit by stopping rebates and don't generally benefit by discriminations on the whole, but do benefit by as high rates as traffic will bear and yet move, they take shelter behind their professed desire to stop rebates and discriminations, loudly denounce them, while they minimize the unreasonable rate exactions, the real money-making, in expectation that you will pass a drastic law against the former for their benefit, but leave the latter untouched.

Time forbids that I take them up in detail, but the records of the Interstate Commerce Commission furnish definite testimony upon the subject. They may be of the opinion that no rates are unreasonable, and I grant that they hold that; their opinion on the subject does not make it so. But when they go into the domain of fact and state that there are no complaints against the amount of rates, the only way I can answer it is to simply state that it is not true and cite the records to prove it. Charges of discrimination generally involve the amount of the rate. Furthermore, I state that I believe there are thousands of complaints made with respect to the amounts of the rates which for want of a remedy were never brought to the attention of the Interstate Commerce Commission or any other tribunal.

This, it seems to me, is a necessary result of so extensive a business. No one claims all rates on anything too high or too low. I assert it as a fact, however, that it is the amount of the rate to which the principal complaints are made in the great producing country of the West, and those complaints, as shown by the records, are directed against some of the rates on the principal commodities of the country—viz, coal, lumber, cotton, grain, live stock, hay, and like products of the outbound business, and a great variety of commodities inbound. Some rates may be too low, doubtless are, thus producing discrimination, while in other cases it arises from some being too high. It is not to be expected that shippers will make complaint when the conditions which exist respecting the manner of making rates, to afford him no remedy, are so well known. As an example, I dare say that aside from the complaints made by the organizations representing the live-stock interests of the Southwest, but few complaints reach the ears of the traffic men against live-stock rates; but that is not an admission that they are satisfied, for it is perfectly well known that it would be useless, and this may serve as an example of thousands of others. Our associations complained they turned deaf cars. Furthermore, extortion is frequently acquiesced in for want of a remedy. That the producers of grain in the great grain States suppose that their rates from their farm stations are in many instances too high there is but little doubt; but what good would it do for them to complain about it unless the law affords a remedy? They need not tell me that the producers of grain in the central grain belt of Kansas believe for a moment that it is just to charge 14 or 15 cents for a 200 to 250 mile haul on wheat to Kansas City when the roads handle the vast export traffic from Kansas City to Galveston for practically the same price for three or four times the distance, and that instance is an example of thousands. Nor does a cotton shipper from the Indian Territory or Oklahoma believe that it is just to charge him half as much for shipping cotton 350 to 400 miles to St. Louis or Memphis or Galveston as they are willing to accept to haul it from the same points via Sioux City and Portland to Yokohama; nor that the farmers in Oklahoma should be charged almost as much or more for shipping lumber from the lumber regions of Texas and Louisiana as the roads are willing to haul it to Omaha. If there was a profit in the one, the other is probably too high.

They bring as witnesses before you some shippers to express the opinion that they expect a lower rate if the railroads themselves are allowed to fix them and to protest, therefore, against the granting

of a remedy. If the expectation has any foundation in fact, since it is not proposed to fix a minimum rate, but only to substitute as the published rate a reasonable and lawful one, where found to be otherwise, it amounts to nothing as an objection to the law proposed. If they believe that rates will be lower without this law, why all this protest by the railroads that the Commission will make the rates too low? Either they don't believe it, or are enjoying some special low rate, or expect to do so.

They assert that if the law be passed it imperils the value of their property, their stocks, and bonds; and yet they say that if let alone the rates will naturally decline. If they believe that, what matters it whether reduced by the Commission or themselves? The effect in either event must be the same in its nature, differing in proportion to the amount of the reduction.

They express the fear of great disturbance in their rate relations, and consequent depreciation of earnings, and yet some of them insist that the people are all satisfied so far as they know. If so, what fear need they have from a fair tribunal? If the people are satisfied, will they make complaint, and will the Commission decide to reduce these rates that they say are reasonable and with which the people are satisfied?

They say that the tendency is for rates to decline, and yet they urge that if a commission reduce them, they will be ruined. And while insisting that the rates are not too high, yet they confess to the contrary by assuming that a commission will on investigation find to the contrary. If, in answer to their claim that rates are on the decline, you call their attention to specific and large advances, they say these rates were too low, and advocate that for various reasons the advances were justified, thus confessing the advances while attempting to avoid the force of it.

They insist that the law is sufficient if enforced, and yet they say that if this remedy be provided so that the law can be enforced they will be ruined. They overlook the fact that the present law denounces rates which are unjust, unreasonable, unduly preferential, and discriminatory; vehemently claim that they have not violated it, but grow eloquent, if not vindictive, in denouncing the Commission for not having enforced it. If they do not object to the enforcement of the prohibitory features of the law as it exists to-day, why all this protest against adopting a remedy which will result in its enforcement? It is a bluff on "a bobtail." What we are after is a remedy to enforce the present law.

As proof of the fact that the Commission is not competent they cite decisions of the court holding that it did not have the power, and make this in effect the basis of the assertion that the Commission could not correctly decide on a proper rate, when, as a matter of fact, the Commission's decision as to the amount of the rate was unquestionably correct.

It is one of their contentions that all matters should be left for the courts to decide concerning the amount of the rates, in the face of the Supreme Court's repeated statement that the Commission is more competent than a court to decide such questions.

In one way and another they have raised all sorts of constitutional objections. As I understand it, they urge that it would be contrary

to the Constitution to leave it to the Commission to decide on a rate, because it is a legislative power which Congress can not delegate, and they object to the law because it confers judicial powers upon the Commission. They say it would be unconstitutional to leave it to the court to decide on appeal or otherwise, and on the other hand contend that it would be unconstitutional to leave it to the Commission to decide without appeal.

They say it would be unconstitutional to provide for a commission to regulate the rates, because it would require different rates to different ports, and yet that they, as the creatures of the law, may do that with impunity. And they seem to fear Atlantic ports would be deprived of business by giving to Gulf ports a lower rate, yet they have done and now do that themselves from western grain and cotton fields.

They seem certain that any law which has been proposed is unconstitutional, and manifest great concern lest you should pass a law that is unconstitutional. This seems strange in view of the fact that they oppose any law at all. Is it really sincere? May it not be born of the opposition to regulation?

Many of them say that they favor Government regulation, yet with few exceptions they protest against either your right or duty to pass a law which would in fact regulate the rates.

These and hundreds of other inconsistent expressions but prove either the insincerity or the unreliability of their opinions and contentions with respect to these matters. Space and time forbid that I should take them up further in detail, but the record is full of them.

They refer us to European countries to obtain a standard of rates, but when we look there for laws which regulate them they assert that conditions are different. So they are, totally, as to traffic.

By their numbers and financial and personal importance they overwhelm the public with their opinions, which they insist must be accepted. They have brought before you many shippers to claim they are satisfied and have low and favorable rates. So long as their rates remain so, they need no remedy; it is the other fellow who needs it.

They are loud in their denunciation of the Townsend-Esch bill and equally so in praise of the railroads for the low rates they enjoy. They demand that no change be made; that it will upset business by increasing their rates or changing relative rates; and thus, while not intending to do so, they prove the existence of an undue preference and discrimination, which they deny exists. The wholesale merchant, lumber dealer, organ maker, furniture man, and others, having obtained these advantages, naturally fear the light of day. Why do they assume the Commission would change the rates? Why this fear? A manifest confession. Not, perhaps, a confession that they enjoy too low a rate (they would not say that), but that competitors' rates are too high. The fear is that a fair commission might reduce the competitors' rate, so as to give the other fellow a square deal. The railroad is a joint participant in the fear and confession.

I have found it to be a fact that in the matter of making rates the large systems of railway have dominated and practically controlled the making of all rates to the Southwest States and Territories, and that short lines and unimportant have necessarily accepted what the other lines are pleased to do. It needs no argument or recital of facts to prove this, because it is manifest. Hence my investigations and my statements refer to these systems.

COMBINATIONS OF RAILWAYS IN MAKING RATES.

Are these railways in combination with each other in the matter of making rates which they will charge and maintaining them, and in making such advances as may be made?

In answering this question in the affirmative I will state that in four or five different cases before the Interstate Commerce Commission in which I have interrogated the witnesses, the testimony of either the traffic officials, general freight agents, or the assistants to these officers, within the last two years, has been given with respect to what they actually do in the matter of making rates, and that testimony is on file with the Interstate Commerce Commission and may be examined by any one, and which I assert furnishes indisputable evidence of the combination, in spite of their vigorous denials of it. The cases mentioned, in which that evidence is on file, are as follows:

First. The investigation involving the reasonableness of the advances made on March 5, 1903, on all of the class rates from St. Louis to Texas common points. The advances, according to the testimony of Mr. Stith, general traffic manager of the Missouri Pacific system, amounted to from 6 to 20 per cent, and included not only the class, but most of the commodity rates. This was done by agreement or combination. The facts with respect thereto, and the arguments against the reasonableness of the advance is contained in the brief which I filed before your honorable committee when I was before it in February last.

Second. The investigation of the Commission with respect to the advance made in the proportional grain rates between Missouri River and Chicago about January, 1902. That advance of 2 cents per 100 pounds raised the proportional rate between Missouri River and Mississippi River, and thereby increased the rate to Chicago 2 cents per hundred pounds from Missouri River points; at the same time the rate to Galveston and New Orleans was advanced 2 cents per hundred pounds. All of this was by agreement or combination.

Neither of these cases have been decided by the Commission. There has been a grain-rate war of varying intensity "off and on" for more than a year, and I can not state the exact status of the matter now.

Third. The case involving comparative rates on dressed meat and packing-house products from Missouri River to Chicago compared with the live-stock rates to Chicago from points intermediate, in which the Commission has held—in February, 1905—that the lower rates on dressed meats constitute an undue preference against live stock from intermediate points in Iowa and Missouri to Chicago, and suit has been recently filed to enforce the decisions.

Fourth. The proceeding of the Cattle Raisers' Association of Texas, joined by the other western cattle associations, involving all of the western and southwestern live-stock rates to the markets as well as the rates from the southwest to the northwest ranges, charging the unreasonableness of many rates, which is to be argued before the Commission in a few days.

In the preparation and trial of these cases it has been necessary to procure a great detail of statements, taken from the annual reports of the railroads, with respect to the actual operation of these

lines, as shown by their annual reports, as well as a vast amount of other evidence, including the examination of railway traffic men. All of it, to my mind, proves the combination, and that under the item of operating expenses are hidden earnings converted into property dividends.

LET THE FACTS SPEAK FOR THEMSELVES.

I take it that most of the members of this honorable committee have not had the time and could not possibly take the time to go into the detail of the accounts or annual reports of even one system of railway extending over a period of ten years to ascertain just what the comparative statements show and the detail of them. If you were to do so, you might be greatly surprised (in view of the professed infallible railway methods) to find how easy these accounts may be so kept as to not reflect the real operations, to one not possessed of the information or the opportunity to procure the information to check an error, or to discover wherein the net results are not always correctly reflected by the annual reports of these roads. I do not mean by this that their accounts are dishonestly kept, or their reports dishonestly made. I mean this: That since it is unimportant to the railroad company oftentimes whether a given improvement is taken out of the gross earnings as an item of operating expense or taken from the gross earnings and charged to income account, or as capital account against a surplus, it will frequently appear, as it has often occurred, that the net earnings reported as such are far less than the real net earnings. This is but an example, of which in recent years there may be found a great many, which will prove that the annual reports of net earnings of the railways do not reflect the real net earnings by the amount of additions to property of various sorts and betterments which are charged up as operating expenses. The very great increase in the items of operating expenses under the head of "Maintenance of way and structures," and "Repairs and renewals" accounts, on most of the lines in recent years, proves conclusively how extensive have been the additions—betterments. For an argument and exact showing with respect to this point, I beg to refer this honorable committee to the brief in first case above mentioned, printed as a part of your proceedings during the last session of Congress, where this matter is fully set forth. It does not need repetition here. The matter becomes important because they claim less net earnings than are really earned, if the property additions be considered.

Answering the question above propounded, as to the existence of a combination, I state it as a fact that the traffic officials of the southwestern lines, or their assistants, have, by their testimony in the cases above mentioned, admitted the existence of a state from which no other inference can be drawn than that these roads practically agree upon the rates of freight which they will charge, and concurrently publish those rates, and do likewise with respect to each of the advances which have been made in those rates, to the same extent and as fully, so far as affects the shipper, as they did previous to the decision of the Trans-Missouri Freight Association Case by the Supreme Court of the United States. They all deny, in terms, that there is any agreement, but they all admit the facts which

show a complete combination. I do not mean by this that the combination is not of such character that no one of them could not withdraw from it and put in a lower rate of freight at any time it pleased, which the others must meet; and I do not mean to say by this that the rates become like the laws of the Medes and Persians, unalterable and unchangeable, but that the combination does exist. It not infrequently occurs that upon shipments from some particular station on some given commodity, or from a group of stations on some given commodity, some line or system may feel itself compelled, by its particular surroundings, to reduce a rate, but practically in all such cases the object is to meet what that line believes to be some sort of undue advantage or influence which some other line is exercising to get the traffic; or to secure traffic otherwise not obtainable or to meet some new condition—money making being the legitimate object. Compared to the whole number of rates and stations, these reductions are unimportant, and may be dismissed without consideration, for the rule is correctly stated above, that on the great body of rates, covering the great volume of the traffic, these roads are in a combination with each other to fix the rates, and competition in rates is, for all practical purposes, eliminated.

I mention the exception in the matter of the grain-rate war referred to, and a notable exception with respect to rates on iron and steel articles within the last year, where there was a rivalry in the matter of supplying these things to the trans-Missouri territory between the manufacturing enterprises in the East and at Pueblo. The Missouri Pacific line cut the rates from Pueblo eastward into Kansas and other Missouri River districts. I am not familiar enough with the transaction to say how they came out and whether it was on account of a reduction first by some other line from the East into that territory, nor can I state what the cause was, but these two examples, whatever the cause, simply serve to show an exception to the rule and to prove the rule. The files of the daily press in Chicago and St. Louis will prove beyond controversy the meetings of these railway traffic officials and agents for the purpose of fixing rates, adjusting differentials, regulating the relative rates between various commercial centers, and the like, for years. When they are read in connection with the actual testimony of the witnesses I have referred to in the above cases and in connection with the history of the Joint Traffic Association, the Trans-Missouri Freight Association, and the Western Freight Association, and in connection with the history of the litigation growing out of the effort to enforce the Sherman antitrust act against them, it will be made plain to any man who is fair in his judgment and who will sufficiently consider the subject to have an analytical knowledge of it that the existence of such combination can not be seriously and conscientiously controverted. This fact answers at once a multitude of contentions which have been made by the various representatives of the railways who have testified before you, and furnishes the strongest reasons for rate regulation.

It answers the contention that the railways will better take care of and subserve the public interests—that is, of the producers and consumers of the country who pay the freight—through the competition among the railways themselves, than by fixing or regulating rates through the medium of a commission authorized to do so.

It answers that proposition, because if my statement is correct competition in the matter of rate making is eliminated as a potent factor to bring to the producer and consumer, in many cases, as low a rate of freight as good business and fair profit to the railroads should demand. No one could contend that competition, if thus stifled, will subserve the public interest, as we think or suppose it ought to do, and as the railroads contend it does. Stability in rates may require such concurrence of the roads; I am disposed to think it does, but regulation is the more essential.

THE RATE PER TON PER MILE THEORY OF DECLINING RATES EXPLODED.

It answers the contention that the tendency in rate making is for the rates to decline rather than to advance. If the combination exists, why should they decline? As I stated before this committee in February last, that has not been the tendency in the West, for the very object among these railroads is to prevent this tendency to decline in rates; to secure, where possible, an advance in the rates, if in so doing the volume of the traffic is not restricted, and if by so doing the ultimate result will be the making of more money. This is the very life and reason of the combination. The facts with respect to whether rates have been advanced or declined are not determinable by the method which has been so persistently urged upon this committee and the House committee, viz, that because the rate per ton per mile, as they are pleased to call it, shows that it is less on the average of all tonnage than at some previous period, therefore the rates have a tendency to decline. I know that these gentlemen who make this assertion know that that proposition is not true, and I know that a number of this committee are quite well aware of the fallacy of any such conclusion. I would not advert to it were it not for the fact that, based upon that fallacy, men of very high standing in railway circles and otherwise have insisted before the committees and filled the public prints with the claim that there is no necessity for the existence of a commission for the purpose of fixing or regulating the rates, if the object be to secure a reduction or prevent an advance, for they say that the rates have already declined, are declining, and predict a very much lower scale of rates in this country than we now pay, if, as they put it, the railroads be treated fairly and given a free hand, without Government regulation. If they prove declining rates it is important, but this method don't do it. If once this fallacy is shown up, and it appears to your honorable committee that, instead of there being a reduction in the rates, the tendency is the other way, then the whole fabric of the argument of these gentlemen falls for want of a premise, or rather by the falsity of the premise.

There is no such thing as "rate per ton per mile;" it is the average revenue per ton per mile on all of the traffic, both local and less than carload, carload, and through freight, which they talk so much about; and it is ascertained by dividing the total ton mileage into the gross freight revenue, without regard to rates. It is always considered desirable to have a long haul, and the rates on a long haul should be much less, in proportion to distance, than on a short haul. This is a principle of rate making which has grown up as one of the factors

in the evolution of the railroad business in this country, and it has greatly stimulated the movement of freight for long distances, has brought the great manufacturing centers in closer touch with the consumer at a distance, and the producer in closer touch with centers of trade. It has been of undoubted benefit to both, though it may oftentimes retard the growth of new industries by a system of rates so preferential as to enable the manufacturer a long distance from the field of production of raw material to ship the raw material to his mills, manufacture it, and return the manufactured goods cheaper than the local manufacturer could afford to make it, and thus, while building up the centers of manufacture, have retarded the growth of manufacturing in the centers where the raw material is produced. But whether beneficial or otherwise it has had two certain effects: One to decrease the average revenue per ton per mile by increasing long-distance hauls, and the other to make railroad witnesses and antirate regulation advocates out of manufacturers and shippers receiving these special considerations.

Again, the very low rates and low divisions of rates on transcontinental shipments, going from the Atlantic to the Pacific and in opposite direction, both for local consumption and for export, and on bonded goods passing through this country, show a very low revenue per ton per mile. As an example: Cotton may be shipped from north Texas points, via Seattle, to Yokohama for $1.35 per hundredweight, while the local rate from the same point to Galveston, a distance of less than 300 miles, has been 60 cents per hundredweight, and there is talk of the railroads enjoining the Texas commission for reducing them to 55 cents. The rate on heavy manufactured iron articles, nails, etc., has been, I am told, as low as 60 cents per hundredweight from Pittsburg to Hongkong, via San Francisco, while the local rate for one-half the distance between Pittsburg and San Francisco will doubtless be considerable higher; and Mr. Bird seemed to think 70 cents from Kansas City to Fort Worth fair. I am only mentioning these facts now for the purpose of indicating how fallacious is the contention that the average revenue per ton per mile for all roads on all traffic can be looked to to determine the range in the rates which people are actually paying for shipment of commodities on particular lines within this country. For example, the average revenue per ton per mile on nails would involve the proportion shipped from Pittsburg to Hongkong at 60 cents per hundred pounds, as compared with that shipped from Kansas City to Fort Worth at 70 cents per 100 pounds.

The heavy tonnage and the opportunity of loading trains in both directions have always been considered desirable, and that policy is pursued by every railroad system in the country, and traffic in heavy articles has been stimulated in every possible way to conserve this policy. I am not contending that it is not good for the country. It is doubtless good for both the country and the railroad, as will often happen; but the point I make is that the result has been to enormously increase the shipments of that class of freight which must take a low rate, considering distance, or not move. Thus the average revenue per ton per mile is reduced, with no corresponding reduction in the freight rates. Just so long as there is an increase in the building industry in this country—that is, in the construction of houses, street improvements, building of railroads, manufacturing industries, open-

ing mines, and the like—so that there is an active demand for brick, stone, cement, lime, sand, lumber, structural iron, steel, and the like, the increase in these classes of freight will continue, and just so long as it is continued just so long will there be an average reduction in the revenue per ton per mile on all freight, although the rates themselves upon these articles and each of the other commodities and classes remain fixed at precisely the same price or even advanced.

The schedules of rates themselves show, and it is undoubtedly a matter of common knowledge, that the local rates and the less-than-carload rates are always higher than the carload rates and through rates, so that the average revenue received as a whole per ton per mile on all traffic carried must of necessity vary according to the transportation of the different classes of traffic, whether local and less than carload or carload and through freight, and the distance hauled; and this would be so although the rates themselves on each item of commodity and class shipped remained exactly fixed. It is plain that as the carload and through freight, taking the lower rate, increases more than the less than carload and local the revenues per ton per mile would decrease. This would not in any sense indicate a decrease in the rate. In fact, it might be exactly the reverse and still be a less revenue per ton per mile. Now, then, having recited these different elements as bearing upon the comparative revenue per ton per mile in proportion to rates, it seems to me that it needs no argument, except the recital of facts themselves, to show that every specific rate on each of the class goods and on each commodity carried from points of origin to points of destination within the United States might be increased and yet the revenue per ton per mile might be decreased.

The only way to determine whether the rates have advanced or not is to take schedules of them and see what they have been from year to year between given points. There have been several proceedings filed before the Interstate Commerce Commission contesting advances which have been made in the rates in one way and another, and these facts proven, and there have been complaints with respect to the advances in rates, and these have all happened because the person making the shipment found out he had to pay more money than he formerly did for the same service. His rate per ton per mile had increased. And this fact is in no sense inconsistent with the statement that the average revenue per ton per mile received by a given railroad or by all of the railroads in a given district may have decreased. Why don't they take the average of some one commodity on the same railroad between the same points?

Furthermore, the statement which has been made in some magazine articles, and possibly before this committee, that the percentage of increase in a commodity taking the higher rate has been as great as the percentage of increase in the commodities taking the lower rate, if true, in no wise affects the position which I take, for the reason that, although the percentage may be as great, the total number of tons increase is not as great, and since it is the total number of ton miles which is used as the divisor into the gross freight revenue which determines the average revenue per ton per mile, it is no answer to my position to say that the percentage of increase has been as great in the one class as in the other. And since it is the ton miles used as the divisor, even if the actual tonnage shows as great an

increase in the one class as in the other, yet if the longer distance hauls under the lower rate and lower division of rate were increased on really high-class freight that would still decrease the revenue per ton per mile without indicating any corresponding change in the actual rate charged.

As an example, the Chicago, Milwaukee and St. Paul Railway carried:

Bituminous coal:	Tons.
For the year ending June 30, 1898	861,843
For the year ending June 30, 1904	2,379,748
Increase	1,517,905

Lumber and other forest products:	
For the year ending June 30, 1898	2,729,384
For the year ending June 30, 1904	3,904,829
Increase	1,175,445

It is well known that these commodities take a low rate of freight. There was a large increase of almost a half million tons in stone, sand, and other like articles, and an increase of over 300,000 tons in brick, lime, and cement, but the largest percentage of increase is shown in the merchandise shipments, which take the higher rates.

Merchandise:	Tons.
In 1898 that road carried	664,267
In 1904 that road carried	1,717,259
Increase	1,052,992

Now, you will observe from this statement that the percentage of increase was much greater in the case of merchandise than in the case of those heavy articles which take a low rate, but the actual tonnage increase was three times as great as the other articles mentioned. This simply serves as an example.

The revenue per ton per mile on this system in 1898 was 9.72 mills; the revenue per ton per mile on this system in 1904 was 8.91 mills.

The average distance haul on each ton in 1898 was 184 miles; the average distance haul on each ton in 1904 was 185 miles.

Now, the question is, What conclusion will you draw from these figures? Does the decrease in revenue per ton per mile indicate any decline in the rate at all? It is perfectly patent that the rates themselves may have all been advanced, and yet the revenue per ton per mile on an average of all freight have been reduced, as it was. I would not devote so much space to this point were it not for the fact that some of the very prominent railroad men in the country have urged it before committees of Congress that the rates have not, in fact, advanced, but are on the decline, and have indicated that the statements of the Interstate Commerce Commission, in its annual reports, with respect to the tendency to advance rates, are colored, and are a mere pretense on which to base a demand for additional powers. I deem it important to expose this fallacy once for all.

As another example to prove this fact, in the 1901 Annual Report of the Texas Commission Appendix Table No. 7 shows the average revenue per ton per mile 10.21 mills, while in the Annual Report for 1903 it shows the average revenue per ton per mile 9.44 mills. Most interstate rates into Texas and out of Texas were advanced about

March 1, 1903, above what they were in 1901, and the local rates within the State of Texas, as shown by the tariffs fixed by the commission, were not, on the average, materially changed. This decrease in the ton-mile revenue was undoubtedly due to the fact that there was a very large increase in the low-grade tonnage, as shown by Table No. 14 of the Appendix in the Annual Report for 1903. I say it is an absurdity to undertake to average the rate on cotton and cattle, on nails and molasses, oranges and wool, etc., yet that is practically what is attempted.

But at last, if you take up each railway system separately, you will find that on some the revenue per ton per mile has in recent years increased, on others decreased, dependent on their own peculiar surroundings. These changes do not reflect the range in rates. So adding the whole ton-miles of all lines and the whole freight revenue and dividing the latter by the former is a mere curiosity and proves nothing.

I submit a statement showing the revenue per ton per mile on certain systems of railway.

LIVE-STOCK CASES.

In view of Mr. Lincoln's statement that the live-stock rates were already too low before the advance complained of, and of the contentions of many railway men before you, I desire to particularly call this committee's attention to Table B of the brief in Texas Cattle Raisers' Case, herewith submitted, showing the rate on cattle from Sheridan Lake, Colo., to Kansas City, 500 miles, 23½ cents on the line of the Missouri Pacific Railway, and to rate sheet No. 1, Fort Worth to Kansas City, via Missouri, Kansas and Texas Railway, 507 miles, 36½ cents, and, again, to Table A, wherein the rate on the Missouri Pacific from Salina, Kans., 504 miles, to St. Louis is 24½ cents, and from Scott City, Kans., to Kansas City, on the Missouri Pacific, 702 miles, is 32¼ cents; from Dallas, Tex., to Kansas City, on the St. Louis and San Francisco Railroad, 685 miles, is 42½ cents (Table A). These rates which I have cited on the Missouri Pacific from Kansas and Colorado points have not been advanced, but the Texas rates mentioned have been advanced 8½ cents per hundredweight since 1897 by the same systems of railways.

I call attention to Table A 1, from which it will be seen that within this time there has been a vast increase in the total tonnage and in the train loading and in the earnings per train mile, and I refer you to brief formerly filed by me at the February hearing of this committee, Table No. 6, to show the increase in the gross and net earnings on these principal lines of railroad.

In view of these facts ask yourselves the question whether when we put our case before the Interstate Commerce Commission for them to decide whether the advances which have been made in the rates on cattle from Texas are justifiable and reasonable the law should provide us with such complete remedy; that if the Commission should find that the advances are not justifiable we would have the right to have them name what is the proper rate in lieu of that which they shall find to be unlawful, if they do find it, and entitled to have the rate go into effect. We have not asked that it be made lower than the rates which other railroads accept and which, indeed, these

same systems accept for similar services from other localities under similar circumstances and conditions; and there need, therefore, be no fear that the Commission will rob them by requiring the service at too low a rate, nor should they be permitted to rob us for fear the Commission might make a mistake. You might, with equal reason, repeal the law against robbery because occasionally an innocent man may be convicted.

We ask of you the consideration of the various points raised in this brief as mentioned in the conclusion, and therein you will find sufficient answer to all this contention that live-stock rates were too low. The fact is they were too high, yet some of these railway traffic men have announced their intention to still further advance them.

We have undertaken to show that $1 per car is amply sufficient to cover, on an average, the loss and damage claims paid on the shipments of live stock. I only advert to this fact because Mr. Lincoln saw fit to call attention to the case where damages were recovered by one Mr. Richards from the Missouri Pacific Railway on a shipment of cattle from Quanah, Tex., to Reese, Kans., which he seemed to think justified high rates. It happens that I represented the plaintiff in the trial of that case and am doubtless, therefore, much more familiar with the facts in regard to it than Mr. Lincoln. Whatever mistake he made, I have no doubt was due merely to a misunderstanding. The facts were, as proven upon the trial before the United States circuit court by plaintiff, a perfect stranger in the community, that when these train loads of cattle were delivered to the Missouri Pacific at Argonia, Kans., they had been on the cars about twenty-four hours and were within 80 or 85 miles of their destination; were poor and thin and should have reached their destination in four hours after leaving Argonia. At the end of four hours from the time the Missouri Pacific received the cattle there were practically none of them dead and not many down in the cars, according to the testimony of the brakeman and conductor and the men in charge of them. When the Missouri Pacific received the cattle the bridge near Reese had been burned down. The man who owned the pasture and who was to receive and pasture the cattle by telegram agreed with the live stock agent of the Missouri Pacific to unload the cattle within a mile and a half of the pasture at the station on the Missouri Pacific next to Reese and next to where the bridge was burned down, but the division superintendent refused to permit it to be done, and the cattle were held in the cars for more than twenty hours (instead of eight, as stated by Mr. Lincoln), and the company refused to unload them at Eldorado or Wichita or anywhere else. The strength of these cattle had a limit. They piled upon each other in the cars and died like sheep.

The defendants had a perfectly fair trial, and they paid it without appealing from the judgment rendered in the United States circuit court before Judge Hook, who is now one of the judges of the circuit court of appeals, at St. Louis, and who refused to set aside the verdict. This was simply a case of sheer, gross negligence, which, as Judge Hook remarked to the jury, looked more like the Missouri Pacific desired to get the freight out of the cattle than to give atten-

tion to the rights of the shipper. The shipper made no money out of the transaction. He didn't, in fact, recover the total amount of his loss, considering the expense he was at. Shall such a case be made the basis for the railroads to levy a high rate of freight on the body of the community to pay for gross negligence which they have committed with reference to one of their patrons? If so, then, indeed may they reverse the principles of law and morals and rob Peter to pay Paul and make use of the opportunity to take advantage of their own wrong. Do not such facts lead inevitably to the conclusion that it will not do to trust to the railway systems of the country the making of the rates at their will without supervision or regulation? This disposition to reach into people's pockets to recoup for everything is dangerous and must be stopped. I mention this because it seems from Mr. Lincoln's statement to your honorable committee that he made use of this illustration for the justification of the advanced freight rates on live stock.

THE CHICAGO TERMINAL CHARGE ON LIVE STOCK

I prefer, before this honorable committee, to deal with specific instances as illustration, and to reason from them to generalities, rather than to state a lot of assumed generalities and undertake therefrom to deduce a rule. All valuable knowledge is detail knowledge, and the general knowledge which is of advantage is that which arises from knowledge of actual detail. Therefore, in order to illustrate another phase of the subject to show the necessity of giving the Commission the power to fix a charge for the future, I here call attention to the case involving the terminal charge on live stock at Chicago, which was brought before the Interstate Commerce Commission in 1896. On June 1, 1894, all of the railroads, by concerted action among themselves, agreed to impose in addition to the then existing rates of freight from points of shipment throughout the West to Chicago a charge of $2 per car, and as an excuse therefor alleged that the stock-yards company, which had permitted the railroads to use its tracks from the several points of junction with the different lines to the stock yards without any charge, on June 1, 1894, made a charge of 40 cents per car in and 40 cents per car out, total 80 cents, except on three lines, on which the charge was made 75 cents per car in and 75 cents per car out. This was very obnoxious to the live-stock shippers and regarded as a "hold up" by the railroads; and it afforded a poor excuse that the stock-yards company saw fit to charge for the use of tracks which the railroad had sold to them, with no agreement for their use, to reach the very depot which they had established and to which live stock must be delivered. While it was for a small amount per car, in the aggregate of some 250,000 cars or more per year, it amounted to very large sum, and that has been going on ever since, while at the other markets no such charge was made.

At the instance of the Texas Cattle Raisers' Association and on intervening petition of the Chicago Live Stock Exchange the Commission investigated the case and found that to the extent of $1 per car the charge was entirely unjustifiable and directed the roads to cease and desist making the $2 terminal charge, which indicated that they would deem $1 justifiable. As usual, the roads refused to obey

the order of the Commission, and thereupon a suit was brought in the United States circuit court at Chicago, which court held that the charge must be considered by itself and not in connection with the through rate, and that since it costs as much or more than $2 to make delivery at Chicago, held that the charge was not unreasonable. The circuit court of appeals on appeal of that case affirmed the decision of the lower court, basing its decision principally on the same ground. On appeal to the Supreme Court of the United States that court decided in 1902 that the Commission was correct, and held that there was no ground for the decision of the circuit court and circuit court of appeals that the charge must be considered by itself, but that it must be considered in connection with the through rate; and it appearing in the findings of fact of the Commission that the rates from Texas points were reduced in 1896 in an amount in excess of the $2 per car, and that there being no showing that the through rate was other than reasonable, that the reduction of that rate in an amount more than the terminal charge would leave it unobjectionable.

It therefore affirmed the decision of the lower court, refusing to enforce the order of the Commission, but held that the Commission's order was right with respect to shipments from all that territory from which no reductions had been made. The affirmance was upon the condition that the Commission might proceed to ascertain what that territory was, in order to correct the terminal charge as to the same. The result was that the case was reopened on petition before the Interstate Commerce Commission and is now up for decision again, but the roads now contend that there is such a change in the conditions and circumstances that although it may have been unreasonable to have imposed the terminal charge when it was imposed or to have maintained it then, yet the terminal charge plus the through rate is not to-day unreasonable. They have sought, on the hearing, to prove that fact by the opinions of various traffic men and other officials of the railroad who may always be depended upon to hold the opinion that no rate is too high which they see fit to impose, and that every rate which is advanced was too low when it was advanced, and so far as I know the facts or have been able to observe in the investigations I have made it has always been on the ground that the previous rate had been made too low for competition.

The various phases which this Terminal Charge Case has taken befor the Commission and courts, make it interesting as bearing upon the importance of vitalizing the interstate-commerce act. For example: It was contended originally that since only the roads entering Chicago collected or received any part of the terminal charge, that the connecting lines not entering Chicago were not even proper parties to the proceeding, although the fact that the terminal charge was added to the rate was made a part of the tariffs from stations on these lines to Chicago. The Commission sustained that contention, and all of the roads except those entering Chicago were dismissed from the proceedings. After the case was reopened, after having gone through the courts, they come forward now with the contention that the Commission can not proceed against the roads who are defendants with respect to this terminal charge for the reason that a great majority of shipments on many lines originate on other lines of road, and contend that they are necessary parties to the proceeding. Of course, the Commission did not sustain any such contention. I merely

mention this as an exhibition of that supreme fairness with which some of these gentlemen who have testified before this committee seem to think pervade all of the actions of the railroads. The order of the Commission, in view of the previous decisions of the Supreme Court of the United States, it was thought could only be directed at the whole charge as being unreasonable, and that was the language of the order, to cease and desist charging the $2, because the Commission indicated that $1 would be sufficient, on the average, to cover the additional expense which was imposed by the stock yards company, for the first time on June 1, 1894, which was the only change in conditions which seemed to justify, in any sense, any part of the terminal charge. The railroads contended that to enforce the order of the Commission would be the making of the rate, and it was insisted the Commission had no such power, and, therefore, they contended that the order was unlawful, in that it attempted to accomplish that purpose. The Supreme Court did not seem to pay any attention to this contention, possibly for the reason that it was, in fact, affirming the decision of the lower court refusing to enforce the order, and the point was not necessary to its decision.

It was contended also that the Commission could not consider the fact, which they found, that the railroads imposed this charge by concerted action and practically by agreement between themselves, because if that were true it might be in violation of the Sherman antitrust act; since the Commission was not empowered to enforce the provisions of that act they could not even consider the fact, and that it was improper for them to find the fact that the railroads had imposed the two-dollar terminal charge by virtue of an agreement among themselves. This contention has been brought down all through the case, but none of the courts, in passing upon the case, ever adverted to that point. You can readily understand that it was impossible for one of these roads to impose an additional amount as a terminal charge on shipments coming from the same points reached by other lines unless all of the roads did the same thing, so that the total expense of marketing the cattle would be the same from a given point of origin to Chicago, otherwise the road which gave the same service for the less compensation would get the business. So I can not see how the roads could have done otherwise, if they imposed any charge at all in addition to the through rate, than to impose a uniform charge, which is exactly what they must do with respect to the rate as a whole from any given so-called competitive point. Therefore it requires but little proof to satisfy any rational person acquainted with the subject that they did, in fact, agree upon the amount of the charge; so that the railroad which paid 40 cents in and 40 cents out to reach the stock yards profited to the extent of $1.20 per car in the transaction, while the railroad which paid 75 cents in and 75 cents out to reach the stock yards profited 50 cents per car.

While it is not my purpose to have this committee judge the question as to whether the two dollars or one dollar of it is just and reasonable, yet for the purpose of making the point clear it would seem to be a reasonable conclusion that since the railroads established these stock yards and built the tracks in connection with each new line of railroad as it was constructed to Chicago in one method or another, and thereby made it a common depot, and in order to do so tore down

several stock yards located at different points in and about the city, and when the great market was built up sold out their stock to the stock-yards company—presumably for profit, possibly through some scheme to benefit some private manipulators—that when the time came that this company to which they sold the stock demanded compensation for passing over their rails to the stock yards it was not fair for the railroads to have burdened the shipper with the expense of this trackage charged to reach the depot. As a mere pretense several of these lines going into Chicago have established a few stock pens out somewhere in their own yards, at which they blandly say they can accommodate all of the live stock destined to their own facilities. Of course, they might make the same remark with respect to having established stock yards in Japan or Korea, for it is quite as likely that any will be consigned to the one place as to the other.

Now, when a shipper, say, from the State of Iowa, who has been shipping and feeding cattle for years, or from the State of Texas, where he has been grazing and shipping cattle for years, knows that the railroad companies have been soliciting his business and seemed anxious to get it on the through rate of freight reaching to Chicago—which was to the shipper, the stock yards at Chicago—always embracing theretofore compensation for the delivery of the live stock to the stock yards, and sees that these railroads get together at Chicago and agree to mulct him in the additional charge of $2 per car, without his consent, for the purpose of reaching the very depot which the railroads themselves established as the delivering point, after they have sold out their interest in this joint union stock yards, he is little to blame for feeling that it is a hold up. But "it is such a little one" that it ought not to count. Yet, in the aggregate, this $2 charge has been accumulating year after year until it has reached the enormous sum of approximately $5,000,000 since it was first imposed. Who do you suppose has paid that? The shipper, because he does not fix the price of his products, and it is taken out of his receipts at the stock yards, together with his freight and feed charges. It has been the consensus of opinion of live-stock shippers throughout the whole western country that this terminal charge was an outrage. It has been obnoxious to them. Do you not think it would be fair to the shippers and fair to the railroads to have a tribunal established by the Government with power to determine, as the Commission did determine, that to the extent of $1 this terminal charge was unreasonable and an unjustifiable exaction, and that the order of such Commission be made effective at once, so that they may not go on litigating it until all the witnesses and many of the interested parties are either bankrupt or dead?

When the Commission decided that $1 of this charge was reasonable, its judgment was undoubtedly just as correct with respect to that territory to which the reduction in rates had been made as it was with respect to where the reduction had not been made, because the charge had not a thing in the world to do with the through rates, and that was proven by the railroads themselves, and has since been proven in a recent hearing of the case. Only the line reaching Chicago gets it. Through the failure of the attorneys representing the complainant, before the United States Supreme Court, of which I was one and of which Mr. David Wilcox, of New York, was the other, we were not able to make the Supreme Court of the United States

understand the practical side of that question, and that was due, I frankly confess for myself, and I believe I might, with equal frankness, confess it for Mr. Wilcox, to our own insufficient comprehension of the fact, for we would not charge the Supreme Court with not perfectly well understanding the question. Mr. Justice Brown, sat in the hearing of the case in the United States circuit court of appeals; so did Judge Grosscup, and they disagreed about the law as applying to the fact, so there was a dissenting opinion by Judge Grosscup. Now, when this case shall be again decided by the Interstate Commerce Commission, and it is scarcely possible to see how they can decide otherwise than that the terminal charge was unreasonable to the extent of $1, as the Supreme Court of the United States has affirmed, to all the territory where the reductions in the rates did not apply, and that covers about 75 per cent of the shipments going to Chicago, why should it not name the correct charge, to be immediately effective? The Supreme Court and the Commission seemed disposed to so construe their decisions that wherever any reduction has been made in the through rate, equal to the terminal charge, that will make the terminal charge reasonable as to shipments from that point, but from all of those points from which there has been no reduction, the terminal charge is unreasonable to the extent of $1 per car.

Now, for the purpose of illustrating to you the impossibility of a court, as a matter of judicial determination, fixing a reasonable rate for the future, let me call attention to the fact that since the imposing of the terminal charge in 1894 there were reductions in the rates on cattle ranging from 4 cents to 2 cents per hundred pounds, from stations between Washington Mills and Edmore, Iowa (Chicago, Milwaukee and St. Paul), and there were advances of 1 cent per hundred pounds from Millville, Shunks, Osterdock, and Elkport. There were advances from Turkey River and Millville of one-half to 1 cent, and of 1 cent from all stations between Guttenberg and Waukon Junction, etc. Probably all such reductions and advances were made on the various roads in Iowa for reasons which could not be recalled by the traffic men themselves, but none of them because of the terminal charge. Now, do you suppose that the Supreme Court or any other court will be able, as a matter of judicial determination, to hold that the two-dollar terminal charge, or one dollar of it, is justifiable, with respect to shipments from some of these stations where these reductions were made, and not justifiable with respect to shipments from those stations where the advances were made? The reductions and advances were made without any regard whatever to the existence of the terminal charge; were not caused by it and had nothing in the world to do with it in any case. Yet. when a court comes to decide a case the court indulges certain presumptions of fact. For example: That where a rate has been long in existence, the presumption will be that it afforded a sufficient compensation to be reasonable, and that was a presumption that was indulged in this case. The court having held that the rate and the terminal charge will all be considered together, they will say that the terminal charge is justifiable as to one set of shippers in one neighborhood who happen to patronize some stations from which the reductions of the rates were made, and not justifiable with respect to some shippers in another neighborhood where it happens some slight advances were made.

As a matter of fact, the probabilities are that these advances and reductions were made in order to adjust and equalize the charges from the particular stations where the changes were made, or to meet competition of new lines, etc. I may be burdening you with minute details, but it is just such details as must arise in almost every case, and it conclusively satisfies my mind after a most careful investigation, and a hope with a view to a correct analysis of it, that in the making of rates for the future, whether they are made by the traffic officials of the railroads or whether they are made by the Commission, exercising the legislative powers delegated to them by Congress, or the State, or by a court through the methods of injunction and contempts, those rates for the future must be fixed arbitrarily, but it is not a subject of judicial ascertainment as to what rate for the future will be exactly right or exactly reasonable, either per se or relatively. I do not mean by the use of the word "arbitrarily" that they shall be fixed for the future without reason and without as full and comprehensive a knowledge of the facts as are obtainable, but after a most exhaustive investigation into the facts of the cases, particularly when involving a wide range of territory and covering shipments over several lines of railroad, it can only be done by the exercise of judgment, not judicial in its nature so much as the intelligent, impartial approximation to the right conclusion. Furthermore, it is perfectly impossible to try these questions fairly in court. You must depend more on the judgment of an expert, impartial body than on the evidence in the particular case.

Abstractly speaking, there is no standard of reasonableness, even as a basis of an existing rate, but when it comes to determining whether an existing rate is reasonable, a tribunal may consider all of the existing facts, and the questions may be judicially determined, so far as the Constitution is concerned. Similar questions are determined every day by the courts, in suits involving the recovery of the price for which goods are sold where no price is agreed upon, or the value of services or labor, in the condemnation of the right of way, and in the ascertainment of all sorts of liquidated damages, and these are proper judicial questions, dependent upon existing facts. But when it comes to determining what a rate should be for the future, logically speaking, it is entirely a different question, though the means of investigation in regard to informing the minds of those who are to pass upon it may be judicial in their nature, yet, the fixing of a rate for the future is not judicial. It is and must be a legislative act, and, therefore, arbitrary, and I repeat that it will always be so, no matter whether the traffic official or legislation fixes it.

The case which I am talking about is an illustration of another point which answers another series of arguments made by the railroads. That is the arguments that if the railroads are permitted to go on charging their own rates, although the Commission may have held them to be excessive or otherwise unlawful, the shipper has redress in that he may recover back the unlawful charge if, ultimately, it is held to be so. It needs but a recital of the facts I have given in connection with the terminal charge case to show you that such thing is in no sense practicable, for I assert it to be a fact, and it will be proven by subsequent results, that if it is held that this terminal charge is unreasonable the shippers will not recover back

a tithing of the $5,000,000 which the railroads have collected. Can a man who has shipped 10 cars or 100 cars afford to fool with it? Take the State of Iowa. It probably shipped out several hundred thousand cars in the past eleven years. How much do you suppose they will collect back? I doubt if they will collect a dollar. In this connection, I will refer, also, to the case of the advances in the rates to Texas common points on all of the class goods and most commodities presented to you on former hearings. The jobber and the wholesaler add the freight to the goods, the retailer adds it, if he can, and that distributes it through so many channels that nobody who was entitled to it would ever expect to collect it. Of course, these merchants can say they pay so much freight, but they collect it back.

It is no answer to the proposition that the Commission should fix rates and let them take effect to suppose that the railroad is going to be very seriously injured. In both the cases I have mentioned they will simply be still performing the service and doing the business for the same old rate. Indeed, they may not make as much profit by not being permitted to charge the advanced rate, but the presumptions are so strong that when the Commission finds the rate ought to be fixed at a certain figure for the future that it will afford a fair compensation that both the shipper and the railroad can afford to abide by it until legally set aside. The point is just this: You must either enact a law which will bring that result, or you must leave it within the power of the railroads to unlawfully take from the shipper and absorb their wealth and put it in their own pockets, without redress, while they litigate the question.

I am aware of the fact that it has been paraded—I think I use the word correctly when I say " paraded "—before the House committee and before this committee to some extent, that the courts have turned the Commission down in most of the cases which have gone before the courts. I admit it, but that admission does not involve the admission that the Commission was wrong. They turned the Commission down generally on some points of law arising from the inadequacy of this act which you are considering. It was simply the want of power in the Commission to fix a rate for the future that has caused practically all of the difficulty, and you may examine the Commission's decisions in vain, in connection with the decisions of the courts, to find where, in all reason and justice, the Commission has fixed an unprofitable rate for the railroads or held that the particular rate was unreasonable except where the facts fairly show it to be so. You show me a case where the Commission has named a rate and I will show you where the same railroad has had a lower one in effect for the same service.

UNDUE PREFERENCE.

The third section of the interstate act prohibits undue preference as between localities, persons, and different kinds of traffic, which is by most of the witnesses confounded with discrimination. Let me illustrate: The Commission held that it was undue preference for the railroads to ship dressed meats from Omaha to Chicago at 18½ cents and charge a live-stock shipper from intermediate points—say from Fort Dodge, Iowa, to Chicago, a much less distance—23½ cents per hundred pounds, and it has instituted a proceeding in the circuit

court of the United States to enforce an order against the railroads to cease and desist charging for intermediate points more than 25 cents per hundred pounds, and this without regard to reasonableness of either rate. Do you think it fair that such a state of the law shall exist that the railroads may enter into contract, as one of them has done, with the packing houses on the Missouri River to ship via their lines at a less rate of freight on dressed meats over the same line of road than it charges the live-stock feeder to ship the raw material, as it may be called, 125 miles less distance to Chicago? It gives such preference to the Missouri River packers that if the freight from some Iowa points to the Missouri River on the live animal be added to the rate of freight on the dressed carcass given to the packer, the packer could buy the live animal at Fort Dodge and ship it to Omaha, kill it, and then ship the dressed carcass back to Chicago cheaper than the live-stock owner could ship the live animal from Fort Dodge direct to Chicago.

Now, this condition was brought about by the action of the railroads, first in giving rebates to the packer and then by the Great Western Railroad entering into a contract with them extending over a period of seven years, and then by that road and others publishing that contract rate equal to the net rebated rate. Several years ago on an arbitration, Mr. Fink and Mr. Cooley acting as arbitrators, it was established that the ratio and relation of rates on both live cattle and dressed carcass from Chicago to New York would be properly 28 cents per hundred pounds for live cattle and 45 cents for the dressed carcass. Whether this is correct or not need not be here considered, but it is a fact that the Interstate Commerce Commission has decided that the rates ought to be higher on the dressed carcass than upon the live animal. But the railroads by contract reversed this order of things and took advantage of their situation against the shipper of the live animals in Iowa to maintain a higher rate upon his animals as compared with the product, which the Commission has held is unjustifiable. Now, must that again be decided by the courts before the Commission's order shall take effect? If so, upon what economic grounds shall it be done? If the courts hold that the Commission's order is the correct one upon the facts, still may it not hold that under the present law it would be proper to prevent these roads for the future from charging more than 20 cents per hundred pounds from Fort Dodge on the live cattle and thus fix a maximum rate? The question is, Has the court this power or can it have the power? Undoubtedly the legislative department of the Government has the power to fix the rate at what it pleases, provided it does not deprive the railroad of some profit in the transaction.

I ask the question if it is not true under our form of government that the best solution at last of this question with respect to railroad rates is that which has been made by the State of Texas, simply that the Commission fix them absolutely, as an arbitrary legislative act? I am not advocating that that be done, but I do advocate that the only way to vitalize the interstate-commerce act is to give the Commission power to arbitrate, and, as a legislative act, after it shall have investigated a given cause, to then simply fix a lawful rate, regardless of the fact that a railway company may have by contract put itself in a place where it can not give A a fair show because of its contract with B. If you do not do this, tell me what remedy and relief has the live-

stock shipper in Iowa against this undue preference which has been found to exist? Are you to say that because the subject is fraught with difficulty, therefore the railroads shall be permitted to continue this character of abuse? The Supreme Court held in the Nebraska Case that although the matter of determining a reasonable rate was difficult it must be done—the duty could not be shirked—to afford the railroads protection against the Commission rates; and while they said it could be better determined by a commission than a court, yet the court must, in the absence of a commission, undertake the task. Now the public demands relief against the railroads, and they say, "Ah, it is too difficult!" The shoe is on the other foot.

I instance this case in order that you may see what injustice and difficulties arise with respect to the matter of undue preference, as well as discriminations and the amount of the rates in the first instance, and as indicative also that this professed fairness of the roads is scarcely provable by existing facts and conditions. It is not a singular, though it may be an interesting, incident to tell that in the trial of this case all the lines of railroad which only reached to the Missouri River seemed to hold to the opinion that the dressed-meat and packing-house products rates, under all the circumstances surrounding the traffic, were more profitable than the live-stock shipments at the existing live-stock rates, while the lines which extend from Chicago on to and west of the Missouri River seemed to hold the contrary opinion; and it would be interesting, had you the time, to read the testimony of the traffic officials with respect thereto. It is one of the cases in which there was a sharp conflict of opinion. Now, who ought to decide it? If you leave it to the railroads, the matter will stand, as it has, with the unjust rate on the small shipper of live stock, while the packer reaps a harvest from the railroad, which in turn keeps up the live-stock rate. These are actualities. The people know them and demand relief; the packer needs none. The previous decisions of the Commission and the arbitration above referred to seemed to throw the great weight of the testimony on the side of those of the defendants who expressed the opinion that the live-stock shipments were the more profitable at the same rates of freight than the dressed meat and packing-house products; certainly that the rates should be lower on the live stock. Another interesting feature of this case, however, was that, notwithstanding this diversity of opinion on the point mentioned, they all agreed, in giving their testimony, that rates on both live stock and packing-house products were too low. In the examination of a number of these traffic officials in the different cases I have asked the question if they could name some rate which is too high, and I have not found a case in which they were willing to hazard the opinion that any rate was too high. Have you? Will there ever be one? Yet they say, "Leave it to us."

In matters of opinion it is expecting too much of human nature to suppose that the mind is not to be affected by the desire. As the twig is bent, so the tree is inclined; and it would be a rare case indeed in which any of us would fail to sustain the charges we had made for a given service when called upon to express an opinion that the same were reasonable. Neither can you expect to convince them against such habitual opinions and their adverse interest.

Now, I want to impress upon this committee that just what has

happened in these cases is an example of what has happened in them all, and I make use of them for the purpose of convincing you by examples of actual happenings that it will not do to leave this matter of determining what the charges for the transportation will be to the railroads themselves, who get the money, because they are going to make it too high if they can, not because they are dishonest, nor because in their opinion the rates will be too high, for they uniformly maintain that they are not, but because the motive of gain will induce them to hold to the opinion that the limit of what they ought to earn has not been reached. Really, if the public has the right to have the question of reasonableness and fairness determined—tried—it is absurd to say the railroads should decide it. That reaches back to a denial of the report.

But on the subject of fixing rates to prevent undue preference and undue discrimination, it was contended by some of the gentlemen who appeared before you that if the Commission should fix the rate on a given road for a given commodity that some other road is going to be ruined by it, because it is supposed the Commission will fix the rates lower than the railroad has. If it does, will the road for which it fixes the lower rate which gets the business be hurt? If the other roads desire to carry the traffic at the rate fixed by the Commission, what is there to prevent them from reducing their rates to that level; and in such case, if the rate fixed by the Commission is fairly compensatory, who has been hurt? Really, the hurt they fear is the depreciation of illegal rates.

It is charged also that the Commission will change the geography of the country, destroy wealth which has been created by individual activity, etc., by destroying the relation of rates which has long existed. Why this assumption? Is it meant as a confession that this relation of rates has been wrong so long that by virtue of being wrong they have become right? If they have become right, what is there to prevent the Commission from seeing that that is true? Why should not these traffic officials testify to facts which show that under all these circumstances a given relation of rates should not be disturbed? If it is a fact, why not prove it in a given case? But if a given business or a given community has been given undue preference, say rebates, or by discrimination in their favor, may that condition or relation not be corrected simply because to do so would deprive the recipients of these benefits from their wrongful gains? It is an absurdity to make such a contention, and the whole system of representations made here by these railway representatives and some favored shippers charging, in one form and another, that any Commission will be mentally incompetent to perform the duties of determining correct rates, and the assumption that these railway men are the only class possessed of sufficient intelligence to do right is an exhibition of egotism unparalleled. This becomes superlatively so when you consider that they also assume that they are so free from that disposition of human nature, the love of gain, that they have not done and will not do wrong, hence are a law unto themselves. Verily the king can do no wrong.

One gentleman remarked before you that he did not believe it was possible for any commission to establish interstate rates in all portions of the United States in an equitable manner, without practical experience and knowledge of the conditions in the localities where

the railroad rates are demanded; and he states that, as a rule, the traffic officials consider the commercial and physical conditions and the competition of one locality as against another. I admit that they do, but with an eye single to the railway's interest which each represents, and the public welfare is secondary, incidental, or left out altogether. Upon what ground can it be assumed that the Commission will not consider these things from the standpoint of the railroad, the shipper, and the public? I daresay he would himself be surprised to find that in the investigation of the Cattle Raisers' Case, to which I have referred in my statement, there are volumes and volumes of testimony with respect to all of these very matters, and that the Commission have gone more fully into the matter and are personally better acquainted with it, or, if they are not, they have the means in the record and in their statistical reports have become equally as well acquainted with these factors as any of the traffic officials who have testified in this case which I have last mentioned, and not biased by a self-interest. I will lay down the challenge that the examination of the witnesses in the case I have above referred to develops the fact that they must resort to the very same sources to ascertain the facts which they assume the Commission can not find out, to which the Commission must resort; and the number of times that they answer that they don't know to the questions propounded to them will show you that they are no more walking encyclopedias of the true factors on which reasonable rates are based than is anbody else who has examined into the matter. In fact, in every case where they have testified to the grounds on which they have advanced rates, they have excluded the factors which the Supreme Court considers as the principal ones in determining a reasonable rate. Since they are making rates to make money, it stands to reason that the reasonableness of it will be an incident—probably an accident. On this subject I desire to submit the following, taken from the brief I have filed in the case involving the Texas and southwestern cattle rates. Before doing so I wish to call attention to some references to my previous statements.

SPECIFIC REFERENCE BY RAILROAD MEN TO MY PREVIOUS STATEMENTS.

It seems from reading a report of the testimony before this committee that many of the representatives of the western lines have taken a turn at my statements and have denied the conclusions which I have reached from given facts, but they have been able to point out but few, if any, specific errors in my statements of fact. Some of them have had particular reference to the live-stock case now pending before the Interstate Commerce Commission. As I have heretofore stated, it is not my intention to try that case or any other case before this committee, and it ought to be sufficient, if what the great live-stock industry of the country believes is true, viz, that they are being charged too much in many instances to entitle them to a remedy, which by the amendment of the law we seek.

In general terms they have disputed my conclusions; hence I know of no better way to answer the contentions which these gentlemen have made than to submit as part of my statement the brief heretofore submitted in the Cattle Raisers' Case mentioned. Therein are contained statements and references from the record of the evidence,

proving the facts as we believe them to be and such arguments as sustain our position and the conclusions which have been heretofore copied.

In the course of the controversy in regard to freight rates I have had occasion to get into some newspaper controversies with some of the traffic men. We may differ in our ideas and not agree in points of opinion and judgment. It is the latter alone which interests you, as supported by facts.

For the purpose of laying before this committee arguments and statements of fact bearing upon this subject of rate making, I ask the permission of this committee to insert at this point a part of an article which I have prepared and which was published in Freight in November of last year, expressing my ideas as nearly as I could now put them. In the possible egotism of my opinion I am enabled thereby to show that there is no very intelligent basis of making reasonable rates, nor any chance for the shippers and the railroads to ever agree on what would be reasonable; and, further, that the subject is capable of being understood by intelligent men; that since competition has been destroyed by combinations, a remedy should be provided, and that the remedy under the present law is not sufficient.

This committee will understand that it is perfectly impossible for me to go through and answer in detail the various statements made by the railway witnesses; hence I must content myself with these arguments and statements, which, if correct, answer a multitude of the contentions made by the various railway representatives. I quote from the article as follows:

TESTIMONY QUOTED.

When asked whether he could state what it cost his company to carry a given commodity like grain between Missouri River and Chicago, one traffic manager of a railway expressed the opinion that it could not be done. To be exact, I quote from the report of his testimony taken before the Interstate Commerce Commission in the investigation of certain advances on grain rates, etc., as follows:

Q. Have you any figures to show what it would cost to perform the service of transporting of grain from Kansas City to Chicago?—A. No, sir; I do not think anybody has.

Q. Well, as a traffic man, having been in the business a great many years, have you any approximate idea of what it costs to perform the service?—A. I do not think a traffic man is nearly as well qualified to judge of that as an operating man, and I have never seen an operating man that would undertake to say what it would cost to carry traffic between two points.

Q. That is not a matter that was taken into consideration—at least the figures were not ascertainable to determine what ought to be reasonable, based upon the cost of performing the service.—A. Certainly not. Assuming that the rates we had been carrying were too low, the advance was considered justifiable for the reason that the rate afterwards charged or the advanced rate was a reasonable rate.

That the same opinion is held by experienced men in the operating department is shown by the testimony of a general manager of another great system of railways, in the same case, from which I quote as follows:

Q. Now, have you, as general manager of this railroad, made any effort to ascertain what it costs you, in fact, to move the traffic over your line of road? I do not mean as a whole, but taking a large class of traffic like grain or live

stock.—A. I have been untiring in that effort most of my life, but I have not arrived at many satisfactory results so far.

Q. Admitting that it could not be stated with absolute mathematical certainty, but as a matter of approximation, could you state what it costs you per ton to move trains of grain from the Missouri River to Chicago over your line?—A. No, sir; I could not, because we very seldom have a full train of grain—very seldom, indeed.

Q. Take dead freight, generally, then. That moves in trainload lots.—A. I can tell you accurately what it costs for engineers and firemen on locomotives, wages of conductors and train crew. I can tell you that it costs $40 a car a year to repair freight cars and from $1,500 to $1,800 per year for repairs of locomotives, but that is only a small portion of the expense when you come to analyze it.

Q. That would not bring you any nearer to a solution of the problem than the general items of conducting transportation?—A. It would not; no, sir.

This forcibly establishes the statement "there is no fixed rule or exact science that can be applied to them" (rates). The cost of the service is undoubtedly one of the most important items in determining a reasonable rate; it is a prime factor, but if the traffic manager doesn't know what it costs, wherein lies his superior judgment?

NO INTELLIGENT BASIS FOR MAKING RATES.

This is very important, because if the traffic man with all of his experience can not know what it costs to move a given commodity with any more certainty than is indicated in the above-quoted evidence, he certainly has no intelligent basis for making, advancing, or reducing rates on a given commodity by the relation of such rates to the cost of the service. To this it may be answered that he does know the cost of receiving, hauling, and delivering. While that is true, it is equally ascertainable by any man of ordinary business sense who would know just as well as the traffic man that the rates should be not less than that item, and in most cases considerably more. But the question in every case is, How much more, and by what standard shall it be measured?

The first answer which suggests itself alike to the traffic man and the well-informed business man is, that the railway should be entitled to earn a fair return on its investment at least. There they part company, so to speak; they can never agree upon what is a fair return.

First. They may not agree on what should be considered as operating expenses.

Second. They may not agree on the amount to be allowed for certain items of operating expenses; whether the president of the company shall receive $75,000 per annum or $10,000 per annum; whether when an old depot is torn down and a new one constructed it should be charged in operating expenses or to capital account, or the amount properly expended for such structure, if charged to operating expenses. I might enumerate a multitude of points on which they would disagree.

Third. They would almost certainly disagree on the valuation or capital upon which the fair return should be allowed. The traffic man, if we may accept the contentions generally made as an indication, would likely contend for a fair return upon his own valuation—most likely the total stock and bond issue—while the business man, not being accustomed to living off the interest of what he owes and not being able to make his indebtedness the basis of his earnings,

would scarcely go beyond the fair value of the money invested in the various facilities used for performing the public service.

Fourth. If the value were fixed and definite, they might disagree, and probably would, on the rate or per cent of the earnings which would constitute a fair return. The traffic man would likely wish to take into account the fact that in some years previous the road had not paid what it ought and wish to add on something to make up the loss, while the business man might think that such previous loss was one of the vicissitudes of embarking in any business, and that if the community ten years ago had too low a rate of freight it would not be just to make the present business community make up for it, particularly as he would have no way of knowing whether the previous low earnings of the railroad may have been due to improvident management or injudicious construction.

COULD NEVER BE AGREED UPON.

But if these difficulties were overcome, and it should be determined that a fair return should be estimated upon present value of the property, together with additions and betterments, the per cent, if based upon percentage, could never be agreed upon. The traffic man would likely contend for the right to earn whatever might be done, if only reasonable rates as viewed by him should be charged, while the business man would probably think that the earnings should be limited to a reasonable per cent, measured by the worth of money or current net earnings upon other large investments of capital in real estate or other permanent revenue-producing property or manufacturing, allowing reasonably for contingencies. Space forbids mentioning many other view points affecting the rate of earnings.

Fifth. Then when it comes to fixing the rate itself on various commodities the still greater difficulty would be encountered. Each would know the history of past rates and earnings, gross and net; each must resort to the records to ascertain those facts definitely. But each would be equally at sea in determining what the relation of rates ought to be between different commodities. Not a single controlling factor could be ascertained. They could tell with some degree of certainty what a whole schedule of rates would probably produce. If they had agreed on what total gross earnings or net earnings should be, a schedule could be devised which would approximately produce that amount. This, however, could only be estimated upon past tonnage rates, earnings and expenses equally open to both by looking to the annual reports and rate schedules. But the relation of rates which ought to exist between the different classes and commodities, it seems to me, is an unknowable thing, can only be approximated by reference to what it has been in the past, and that there are just as many, if not more, reasons existing in the commercial world, aside from mere railway earnings which should control the relation of rates, than exist from the various matters of such transportation as affecting the railroads.

Is there any reason why the business man familiar with history of railway rates from the records of the past should not know as well what the relation of rates should be as the traffic man? The traffic managers admit that they have all been affected by commercial conditions, so they still must be, and on this line it is the mer-

chant, the manufacturer, the producer, the consumer, the community who furnish the conditions.

No one can deny that the public interest must be considered in railway rates and earnings as well as the public service in both freight and passenger transportation; the public is vitally interested. This interest extends to every feature of the rates and earnings, gross and net, and therefore to operating expenses. The public interest is absolutely inseparable from every feature of the complex whole, relative rates and service between places and persons and various classes and kinds of traffic. Shall raw material take a less relative rate than the more valuable manufactured product? Shall food products and the products of the farms, which are of universal consumption as necessities, take a lower relative rate than more valuable products? Shall coal and lumber take a relatively lower rate than some other commodities like grain and live stock? All of these and hundreds of other examples present matters most difficult of solution. In fact, they should be determined with great care in all cases, considering always the interest of the public, the shipper, and carrier. Profound and disinterested wisdom should be applied.

While the railroads have many wise, philanthropic, and public-spirited men in service, they have no monopoly of wisdom, and it must be admitted they are directly interested. True, that up to certain points their interest is coextensive and coordinate with that of the public, of which they are a part, and with the shipper, but in every case there is that uncontrollable, if not illimitable desire for gain which inoculates the age, in view of which it can be said that only traffic men are most capable to consider all of the questions arising when it comes to determine a reasonable or proper rate, actually or relatively, or whether an advance over long-established rates is just and fair. What factor or element in the equation or result to be arrived at may not be ascertained by a competent, intelligent man or body of men charged with the duty to inform themselves and to pass judgment upon it? The contention that only a railway traffic man can do it properly leads to the conclusion that courts, commissions, and legislatures must accept their judgment as ex cathedra.

EASILY UNDERSTOOD BY ANY INTELLIGENT MAN.

The Supreme Court of the United States has stated what principal elements shall be considered, and I am under the impression that they are as easily understood by an intelligent citizen who will take the time to inform himself as by a traffic man. Certain it is that in nearly every investigation by the Interstate Commerce Commission into the reasonableness of advances in rates, the testimony of the traffic men or the railway representatives shows that the factors laid down by the Supreme Court as the basis of determining a reasonable rate were ignored or violated by these same traffic men in making such advances. In most cases they have attempted to justify advances on the ground that the railway company was entitled to greater earnings to meet increased operating expenses and to participate in the so-called general prosperity, but in every such case the

validity of the justification must depend upon the determination of the question as to whether the company was already earning and would probably continue to earn on existing rates a fair return upon the fair value of the property and facilities used in performance of the public service. In view of the public interest in a fair and impartial determination of that question, can it be that only those who receive the money or their representatives shall pass judgment upon it and decide without limit how much they will take?

It may be, as stated by the traffic manager, that "certainly no commission or tribunal could have made these rates as intelligently as has been done under prevailing methods." By this he means, I suppose, the relation of rates between the classes and various commodities, as well as their relations between localities and on various lines of railway. That proposition may be admitted and still not affect the results of my argument. For illustration, suppose we go back to the year 1899, and suppose it is a fact that the system of rates prevailing then had been so framed by this intelligent action covering the entire period of the past. Shall that stand for nothing and the rates, classification and relation of rates be changed by traffic officials now merely because it is the desire of the railways to do so in order to obtain more money? If so, what becomes of the presumption that such rates were the result of the accumulated intelligence of years? The Supreme Court of the United States has considered that the most certain standard of a reasonable rate is one established by free competition, unaffected by combination or agreement between the competing carriers, and this doctrine has been reaffirmed. This was the standard which we used in arriving at our conclusion that the advances in cattle rates were not justified.

If this be correct, will we be denied the right to show that before these live-stock rates were advanced the highest rates established during a period of years by competition and that "intelligent" action spoken of by the traffic manager were less than these advanced rates? Shall we be denied the use of that standard to which the courts say we are entitled in order to determine the reasonableness of the advances? If not, then when we assume, as the shipper does, that the previous rates were sufficiently high to be reasonable and any advance must be justified, otherwise it should not be made, are we not entitled to have that question tried fairly by an impartial tribunal? If it should be determined that the advance was wrong, what ought to be done about it? Ought it not to be abated? Shouldn't the tribunal which decides it name the rate which is reasonable? Shouldn't that be the rate till set aside for sufficient cause? That each of these queries should be answered in the affirmative no fair-minded, impartial man can dispute.

My argument was directed to the point of showing that the interstate-commerce act should be so amended as to speedily correct a rate found to be wrong.

Let us quote from the annual report of the Commission for 1903, as follows:

> An examination will show that advances in competitive rates have uniformly been made effective by all carriers interested upon exactly the same day and for exactly the same amount. It is idle to say that where such a condition

exists, where, for example, every one of the numerous lines transporting grain from Chicago, St. Louis, and kindred points to the Atlantic seaboard advances its rates upon the same day and by precisely the same amount, there has been no understanding between these companies. Nor do the carriers, as a rule, deny such concert of action, but they insist that it does not proceed to the point of an unlawful agreement. Without expressing an opinion as to whether what is done amounts to a violation of law, we wish to point out clearly and emphatically that such concert of action does prevail, and that the prohibition resting upon the carriers in this respect affords the public no protection whatever against such advances.

It is impossible, therefore, for me to arrive at the conclusion to which the traffic manager's experience and judgment lead him, namely, that competition is as "keen as ever." It looks to a lawyer who has heard some of these traffic men testify that there is no competition in rates themselves, but only in solicitation of the business and in service, and that the "edge" is taken off the blade, so that the side of it which applies to rates does not cut at all. It is said that there are few places where cattle can not be driven from one road to another. This is generally not practicable. But, if true, what good is it to the shipper? The rates are the same. Each of such lines has by "conferences" established the same rates from what should be competing points, so that the privilege of driving from one road to another is empty choice.

The trouble is that they are not competing in rates, but advancing them. That is our complaint. The traffic manager says that the changes must be made at the same time, else the shippers will be injured. How? If one road should reduce its rates and the other should not, how would the shippers on either one be injured except by the one maintaining a rate which is too high? This great solicitation for the shipper has only found its expression of late years in most cases by uniform advances, with few reductions in the rates.

REMEDY NOT SUFFICIENT UNDER PRESENT LAW.

The discussion as to the justification for the increase in live-stock rates is scarcely appropriate, as the matter is pending before the Commission. If the proof shall show the rates not too high, no remedy of any sort will be needed. If we are right, and they are found too high, as we think the evidence will show, the remedy ought to be speedy, and the Commission's order, if it makes one, obeyed. Under the present law the remedy is not sufficient. The right to a remedy does not depend on how a case will be decided; it depends upon the wrongs which may be done. It is admitted that wrongs do exist; if so, why not have an adequate remedy? Laws against any wrong only operate when the wrong is committed. He who does no wrong needn't complain at the law.

I am taken to task for my statement that rates are made as high as the traffic will bear and move on the rates made. I stated:

> It has been the constant object of practically all, if not all, of the railroads of the country to fix their rates and charges at a point to produce the greatest revenue; to fix their rates as high as the traffic will bear, and yet move upon the rates made.

Inasmuch as the traffic men have testified that it has been this constant effort to increase these rates for the past two or three years, and

that they have done it wherever they could, I am at a loss to know how else to consider it. The very reasons given for not making the live-stock rates higher were that some other lines would not do it. So I naturally supposed that they were as high as the traffic would bear and move over a given road.

The rates are made as high as the traffic will bear under the circumstances, and will be advanced whenever it is to the best interests, as they view it, of the railroads to do it under all the circumstances. It is this enormous power so liable to be abused which we desire to reasonably limit and restrict. I repeat that every conclusion which I drew is fairly deducible from the facts.

The reason that the railroads will never agree with the shippers on the basis of rates and earnings unless compelled to do it by law, except as their own interest dictates, is aptly shown by the contention that transportation companies are entitled to as much or more consideration than those engaged in any other business. The remarkable contention is made that because money was expended by them "in advance of the needs of the country and in expectation of its developments by the road" they are therefore entitled to more consideration than other lines of business! Well, suppose a given railway company collects higher rates on that basis to-day, who will get the money? Will it be the president or the former stockholders? Who will pay it? Will it be the people who patronized the road twenty or twenty-five years ago or the patrons of to-day? Why are the present patrons to be burdened with exorbitant rates to satisfy the present stockholders for what the former stockholders lost because the country was undeveloped? Their argument leads to the result that the more injudicious a railroad may have been in constructing lines of road in advance of the country's development the greater rates should be charged to make good the losses to some one who didn't sustain them and was not concerned in building the road. It is history that most western roads were loaded down with excessive bond issues besides watered stock, and that they were sold over the world so as to produce great fortunes to the promoters and builders. I fancy that sympathy is very much wasted on them. If they were enabled to sell to the public stocks and bonds for more than under the circumstances they were worth, shall the present generation pay for it? If the same people do not own the roads, they are not entitled to collect high rates to make it up, and if the same people own them, on what grounds can they collect it in rates when they sold the bonds for more than they ever paid out in construction?

It is well known that in one way and another these roads have mostly changed hands, and the plea now is that the present owners "rob Peter to pay Paul," but should be excused from paying Paul, because they can't find him and instead appropriate it to themselves. Certainly this would be the result in most cases if railroads can collect rates of freight to make up for what they didn't get in years past.

The whole matter may be summed up in the statement that the financial managements of the railroads to-day are practically a unit in endeavoring by every possible means to increase their earnings, and as one means to do it various rates have been advanced in recent

years. This the shipper is powerless to prevent, however unjust or unreasonable. The prospect is that these advances will continue, and to the thoughtful man having the interest of the country at heart the question is, Shall this great power go unrestrained?

It may be that I speak from the standpoint of the shipper's attorney, but if the shipper's mouth be closed because he is interested, who shall speak for him?

The committee then took a recess until 8 p. m.

EVENING SESSION.

The committee met pursuant to adjournment.
Present: Senators Kean, Foraker, Foster, and Clapp.

STATEMENT OF MR. EUGENE WITHERS.

Senator KEAN. You may state your name, residence, and occupation.

Mr. WITHERS. Eugene Withers. I live at Danville, Va., and I am a lawyer.

Senator KEAN. Whom do you represent?

Mr. WITHERS. I represent, in the capacity of a citizen, not as a lawyer—not having received nor expecting to receive, nor will I receive, any compensation—the city of Danville and the business men and commercial association, and I think I am safe in saying 95 per cent of the citizenship of Danville.

Senator KEAN. And the other side is only 5 per cent?

Mr. WITHERS. I think that is a great exaggeration of what they represent, but I desire to be unquestionably safe.

Senator KEAN. Do you represent the prosperity or the decline of Danville?

Mr. WITHERS. In some sense I represent both. I represent that prosperity which prospers in spite of the difficulties, which receives no favors and no advantages and no opportunities at the hands of the Southern Railroad. I also represent that part of Danville that does not prosper because of the discriminations of the Southern Railway.

Senator KEAN. You may proceed with your statement.

Mr. WITHERS. I shall take no more time than is necessary simply to state the facts.

On the 8th day of May a committee of two appeared here before this committee, one of whom, Judge Aiken, read a petition authorized to be presented to this committee by the city of Danville, acting through its duly authorized bodies, the board of aldermen and the common council. That petition was presented, and subsequent thereto, on Wednesday, the 10th of May, three gentlemen spoke before this committee, who were accompanied by three other gentlemen who did not speak, and denied in part our statements—that is, they contradicted what we stated were the effects of the freight rate discriminations which we alleged existed against the city of Danville.

Their denials extended merely to the effects that were alleged that resulted from those discriminations. They did not deny or attempt to deny any of the statements with reference to the discriminations and arbitraries in existence against the city of Danville. Immediately upon that becoming known in Danville, the two official municipal bodies—the council and the board of aldermen—the commercial association, and the citizens of Danville took steps to remove the impression that these six gentlemen had sought to create before this committee, to wit, that they in any wise voiced the public sentiment of Danville with reference to the question of railway rate regulation.

The common council and the board of aldermen acted in conjunction with the commercial association and appointed a committee of nine to appear before you and state the facts as they existed, which action was emphasized further by the fact that in response to an arbitrary demand a meeting of citizens was held, representing all shades of opinion and the business men generally of that city, to express their sentiments with reference to this matter, which was done, and the resolutions passed by that meeting have been forwarded to this committee. In the petition presented on the 8th day of May by the committee of two the actual facts were given as to railroad discrimination against the city of Danville. Those facts have not been denied, and I shall not refer to them except incidentally, nor shall I relate or recite any of the discriminations. They will not be denied either by any committee that appears from the city of Danville or by the railway company itself. Those discriminations commenced in the city of Danville in 1886 or 1887. For safety I shall base the beginning of that discrimination from 1887. That period alone covers the time that the committee of two referred to in their remarks in reference to the effect of railway rate discrimination on the city of Danville. Previous thereto Danville was an unusually prosperous town.

It more than excelled its chief competitor, the city of Lynchburg, in progress, growth, development, and business—that is, the percentage of its growth was much greater than the city of Lynchburg. It was stated on page 4 of our petition that this railway discrimination had this effect. "It is depriving it of its trade, cutting their competition. It was stated on page 4 that this railway discrimination had this effect. It is depriving it of its trade, cutting down its population, increasing the cost of living for its people, diminishing the value of its real estate, and increasing the burden of taxation on its citizens in order to meet the interest on its corporate debt and the expense of its municipal government." Those were the facts that the committee of six, three of whom spoke to you on the 10th day of May, sought to refute and deny; and it is for the purpose of presenting the actual facts in regard to these assertions that we appear here, and, in addition, to show exactly the status and the relative positions borne by those citizens to the city of Danville.

In the first place, as to the tax rates, it was not alleged by the committee of two representing the city of Danville that the tax rate had been raised. It was alleged that the burden of taxation had been increased. As a matter of fact, the tax rate has been increased actu-

ally. The tax rate of the city of Danville for twenty-one years, and I give them in periods, certified to, were as follows:

From 1884 to 1890, inclusive, $1.12½ for $100.
From 1891 to 1896, inclusive, $1.37½ for $100.
From 1897 to 1901, inclusive, $1.35 for $100.
From 1902 to 1905, inclusive, $1.40.

And not, as was alleged by Mr. Boatwright, one of the committee of six, has there ever been any reduction from $1.45 to $1.40, because the tax rate was never $1.45. On the contrary, $1.40 is the highest it has ever been, and at that rate it remains to-day, and although the chairman of the finance committee of the board of aldermen and the common council was here present, he made the mistake of informing the speaker that the tax rates had been reduced, when, as a matter of fact, the chairman of the committee was himself a zealous advocate for two successive years—1903 and 1904—of an increase in the tax rate from $1.40 to $1.50, alleging it was necessary to meet the expenses of the city. That statement was made before the committee unadvisedly by the gentlemen who made it, and I find from an examination of their statements before this committee that what they stated to the committee was apparently what they did not know, but surmised, and what they failed to state was what they did know.

Now, as to the population. In the beginning of its growth from 1866 or 1867, the end of the civil war, up to 1886 or 1887, the prosperity of the town of Danville was hardly surpassed by any town in the South. In 1887, the West Point Terminal Company, or the Richmond and Danville Railway Company, operating under the name of the West Point Terminal Company, consolidated with the Washington City, Virginia Midland and Great Southern Railway Company, which was a competitor with the Richmond and Danville Railway Company, operating under the name of the West Point Terminal Company. Beginning with that period are the troubles to which we allude when we speak of the lack of prosperity and the discriminations and arbitraries and their disastrous results on the city of Danville. Prior to that time its population had rapidly increased, increasing from between three and four thousand in the year 1870 to 7,500 in 1880; and in 1890 Danville's population was 10,305, while in 1900 its population was 16,520.

As a matter of fact that increase, or nearly all of it, occurred prior to 1887. That increase was accounted for almost exclusively and entirely by the annexation of the town of Neapolis, on the north side of the Dan River, which had been in existence as a separate town since 1875, and owed a large percentage of its growth and development to the Riverside Cotton Mills, and that growth had all occurred prior to its annexation to the city of Danville, in 1896. The comparative growth, therefore, of Lynchburg and Danville for the periods named is the only test whereby the effect of these arbitraries and discriminations against the city of Danville can be fairly decided; for while Lynchburg, by the census, decreased from 19,709 in 1890 to 18,981 in 1900, the decrease was apparent and not real, because the suburbs of Lynchburg—the town not having extended its limits since 1870—had increased in reality 9,000 in population in that time, while the suburbs of Danville had increased but 1,215.

So our contention was true, that railroad discriminations and arbitraries had affected our tax rate, had made our population stationary, if not diminishing it, and decreased our real estate values, because prior to 1887 the growth of the town in real estate values was rapid and steady. In 1885 the real estate valuation was $5,511,097. In 1890 it had decreased to $5,170,928. In 1895 it had decreased to $4,979,146. In 1897 it had apparently increased to $6,532,657. In 1900 it was $6,828,720, and in 1904 it had decreased again to $6,521,-005. The increase from 1895 to 1897 and 1900 was entirely apparent and not real. The Riverside Cotton Mills, which is a large corporation, and a very prosperous corporation, was, from its incipiency in 1883, for ten or fifteen years, exempt from taxation. Prior to 1897 the entire mill had been developed to its utmost limit and capacity, and by reason of the bringing in of the Riverside properties into the taxable values of the city of Danville, there had been added to the taxable values of the city of Danville between 1895 and 1900, $1,092,-465, which had come in, not because of an increase in value, but because of an addition to the taxable values of what had not been subject to taxation before; and in addition to that, in 1896, the town of Neapolis, to which I have already referred, had been added to the city of Danville, and its taxable values were nearly $1,000,000, so that we again did not misrepresent the facts when we said that our real estate values had decreased and that the reason of that decrease is the arbitraries and discriminations of the railroads.

Now, to-day I have heard a great deal about confiscatory rates, fixed by a Commission authorized to fix rates, but I have not heard anything about confiscatory rates fixed by the railroads, whereby the property of the public and of municipalities and taxable values are destroyed; but those facts exist. They exist in my town, and these facts exist in spite of the further fact that the city of Danville has expended large sums of money for the purpose of procuring and bringing about competition. It did this by issuing bonds and turning the proceeds of those bonds over to the railroads in 1871 $100,000 for the Lynchburg and Danville Railroad, which was a link from Lynchburg to Danville of the Washington City, Midland Virginia and Great Southern, which was absorbed by the Richmond Terminal Company or the Richmond and Danville in 1886, and the Richmond Terminal Company, with all its privileges, franchises, powers, and rights, was by the legislature of 1893–94 of the State of Virginia turned over to the Southern Railway Company, which is now its successor. By the absorption of that road not only were competitive rates destroyed so far as the city of Danville was concerned, but all of the benefits that accrued to the city of Danville by reason of its contribution of $100,000 to the building of the Lynchburg and Danville link were swept out.

Senator KEAN. Is not that a complaint against the State of Virginia and not against the United States?

Mr. WITHERS. Yes; and we have remedied that in part by organizing in the State of Virginia a railway commission with power to fix rates, which is doing extraordinarily good work, and which has not brought about ruin.

Senator KEAN. But it has not helped Danville?

Mr. WITHERS. Yes; it helped it in small things only, because the percentage of intrastate freight as compared with interstate freight, as shown by the railroad commissioner in 1901 just prior to the establishment of the State corporation commission, was about one-tenth. Subsequent to that time the Danville and New River Railroad was built, now known as the Danville and Western. To that at on time the city of Danville subscribed $50,000 by issuing bonds in 1880. In 1882 it subscribed again $60,000 by issuing bonds. The name of that railroad was changed to the Danville and Western. It is now owned, directed, and controlled by the Southern Railroad Company, and that competition was destroyed can be easily shown. An examination of the map of Virginia will show that a haul from the West by Roanoke through Martinsville to Danville—traffic comes from Roanoke to Martinsville via the Norfolk and Western branch, leading from Norfolk, Va., to Winston, N. C.—is shorter than a haul from Roanoke to Danville via Lynchburg, where it is transferred to the main line of the Southern.

The other route or road is much shorter, via the side line of the Norfolk and Western, known as the Roanoke and Southern, and then via the Danville and Western from Martinsville to Danville. Yet to-day not a pound of coal comes from the coal fields, not a pound of freight, so far as my information and knowledge extends, is allowed to come via Martinsville down the Danville and Western to Danville, but it all must go via Lynchburg down the main line of the Southern to Danville, and there again the city of Danville has lost the benefit of its attempt to establish a competing line. At the same time, or about the same time, the then town of North Danville, subsequently known as Neapolis, now the fifth and sixth wards of the city of Danville, issued bonds to the amount of $30,000 toward the building of a Lynchburg and Danville link of the Washington City, Virginia Midland and Great Southern Railway, which town likewise was seeking a competitive road for its freight rates and at the same time the county of Pittsylvania, in which the city of Danville is situated, issued a large number of bonds for a similar purpose, and those bonds have been wiped out so far as any beneficial effect to that county or those towns or the population of the city of Danville is concerned, by the consolidation or the absorption of the Virginia Midland Railroad, as it is known, by the predecessor of the Southern, Richmond and Danville or West Point Terminal, to the franchises, rights, and privileges of which the Southern has succeeded.

Senator KEAN. Did the people of Danville ever protest against these consolidations?

Mr. WITHERS. We have. We have not been in court to protest.

Senator KEAN. Did you ever protest to your legislature?

Mr. WITHERS. We have, sir, and these facts have been set out before the legislature.

Senator KEAN. After the consolidations?

Mr. WITHERS. Yes; because we had no warning of what was going to take place until the thing was actually consummated. Subsequent to that time, in 1890, the city contributed $150,000 to the building of the Atlantic and Danville Railroad to compete with the Southern Railway Company for all northern and eastern service and to some

extent for southern and southwestern traffic, leading from Danville, Va., to the city of Norfolk, Va. In 1899, while the case of the City of Danville *v.* The Southern Railway Company, conducted under the name of the Interstate Commerce Commission *v.* The Southern Railway Company, was actually in progress and before its decision the Southern Railway absorbed the Atlantic and Danville Railway by a lease of fifty years, from 1899 to 1949, and competition was again destroyed.

Rates have since again been raised and the relief looked for in that direction has been destroyed. That question has never, so far as my knowledge is concerned, been permitted to be decided by the courts. That is, the question of whether or not the crushing of competition by the railroads of which we complain will in any wise affect the decision of the court upon the question of whether or not similar conditions existing as they do at Danville can be affected by railroads arbitrarily destroying competition during the progress of the suit in which redress is sought. It was dismissed, as was stated before this committee on the 8th of May, by the Department of Justice, after the circuit court of appeals had passed upon it adversely to the city, that question not having been raised to my knowledge, although during the pendency of the suit the Atlantic and Danville was absorbed by this lease to the Southern, and the old condition of noncompetition was restored to the city of Danville.

Now, these are the facts that we seek to make plain to the committee, not that it is a contest between committees. If it were such, certainly the two gentlemen who appeared here before you on the 8th of May would not consume your time in appearing again. It would be too small a matter. But how did this committee of six appear before you on the 10th? I think you should know, because I respectfully submit to this committee that it is essentially an instance of artificial sentiment. That committee represented no one except the gentlemen themselves. Three of those gentlemen—two of them, at least—were at the time of their appearance directors in the Danville and Western Railroad Company—Messrs. James G. Penn and R. A. Schoolfield—being so reported up to the 1st of January to the State corporation commission.

If there is any change in their status, it is a change from one branch line to another. They are still directors in the Southern Railway. Mr. James I. Pritchett, another gentleman who spoke before your committee, I am reliably informed, is a director in a small branch. I should use the term "nominal directors," because the position is peculiarly and solely an honorary position. There is nothing in it of responsibility or direction or control. Those same three gentlemen are directors in the Riverside Cotton Mills, which expresses itself as being satisfied with the present existing conditions. Why I do not know. I can not state. I know that those who have the arbitraries and discriminations to contend with which have been admitted under oath by the signed answer of the Southern Railway Company, are in no wise contented and are in no wise satisfied. To show that that petition was fairly presented, I beg leave to submit at this time a petition presented to the legislature of the State of Virginia, and I have in my possession here an autograph copy of the same, presented

by the city of Danville in 1901. I herewith submit that petition, which is as follows:

Memorial to the general assembly of Virginia from the city of Danville, Va., presented through the president of the senate and the speaker of the house of delegates, with the request that it be read from the clerks' desks, February, 1901.

The undersigned petitioners, the city of Danville in its corporate capacity, acting through its council, the Business Men's Association of Danville, Va., The Danville Tobacco Association, the officers of said city, and firms and citizens generally of said city and its suburbs, residing and paying taxes therein and pursuing different occupations, trades, and professions, beg leave to submit to your honorable body, through the speaker of the house of delegates and the president of the senate, the following statement and memorial, with the request that the same be read from the clerks' desks, to wit:

1. That the said city contains about eighteen or twenty thousand inhabitants and is located on the lines of the Southern Railway Company at a point where the Alexandria branch, formerly the Washington City, Virginia Midland and Great Southern Railway, unites with the Richmond branch, formerly the Richmond and Danville Railroad, and where the Atlantic and Danville Railroad, before it became a part of the Southern, has its western terminus.

2. That previous to the purchase (1886) of the Washington City, Virginia Midland and Great Southern Railway by the Richmond and Danville Railroad Company the two said roads were competitors for transportation into and out of the city of Danville, and your petitioners and others in Danville enjoyed similar rates of freight with the cities of Richmond and Lynchburg, and before the sale of the Atlantic and Danville Railroad to the Southern those two last-named roads were competitors for all freight transported from and to all points, but since the Southern Railway Company has become the owner of all of said lines of road there is no railroad competition to and from Danville, and, your petitioners believe, no hope of competition, and therefore your petitioners and others in Danville are forced to accept rates prescribed by the Southern Railway Company.

3. That for a great many years and until she was deprived of that power by the acts of the Southern Railway Company, as will be hereinafter set forth, Danville competed successfully with the cities of Lynchburg and Richmond as a market for the purchase and sale of commodities and as a point favorable to the establishment of industrial enterprises.

4. That the said Southern Railway Company, a corporation chartered by the general assembly of Virginia, the Merchants and Miners' Transportation Company, the Old Dominion Steamship Company, the Clyde, Philadelphia and Norfolk Steamship Line, the Baltimore, Chesapeake and Richmond Steamship Company, the Baltimore and Norfolk Line, and the Baltimore Steam Packet Company, common carriers by water, and doing business in the State of Virginia, and connecting with the line of the Southern Railway Company, are engaged in the transportation of goods, wares, and merchandise, under a common arrangement, by continuous carriage from Boston, New York, Philadelphia, Baltimore, and other northern and eastern cities by way of Norfolk, from Norfolk to Danville, and through Danville to Lynchburg, and most, if not all, of the commodities used by the citizens and merchants of Danville in consumption, sale, or manufacture are transported over said routes, and your petitioners believe that most, if not all, of the goods, etc., delivered by the Southern Railway Company to the people of Lynchburg are borne over the same route. And the said Southern Railway Company and the said water carriers have established and put into force over their said lines and routes the following schedule of rates per hundred pounds on goods, viz:

On freight from Boston and Providence to Lynchburg: On class 1, 54 cents; on class 2, 47 cents; on class 3, 38 cents; on class 4, 25 cents; on class 5, 22 cents; on class 6, 18 cents; on class A, 18 cents; on class B, 22 cents; on class C, 18 cents; on class D, — cents; on class E, 22 cents; on class F, 36 cents; on class H, 25 cents; boots and shoes, 45 cents; sugar, 18 cents.

On the same class from Boston and Providence to Danville, viz:

Class 1, 71 cents; class 2, 63 cents; class 3, 52 cents; class 4, 38 cents; class 5, 34 cents; class 6, 29 cents; class A, 29 cents; class B, 32 cents; class C, 29 cents; class D, 27 cents; class E, 34 cents; class F, 56 cents; class H, 38 cents; boots and shoes, 71 cents; sugar, 26 cents, thereby making a distinction against Danville and in favor of Lynchburg of 31 per cent on class 1, 34 per cent on class

2, 37 per cent on class 3, 52 per cent on class 4, 54 per cent on class 5, 61 per cent on class 6, 61 per cent on class A, 45 per cent on class B, 61 per cent on class C, 50 per cent on class D, 5 per cent on class E, 56 per cent on class F, 52 per cent on class H, and 58 per cent on boots and shoes, and 44 per cent on sugar.

From New York and Philadelphia, via Norfolk, through Danville to Lynchburg there are the following rates and charges per hundredweight:

On class 1, 54 cents; class 2, 47 cents; class 3, 38 cents; class 4, 25 cents; class 5, 22 cents; class 6, 18 cents; class A, 18 cents; class B, 22 cents; class C, 18 cents; class D, 18 cents; class E, 22 cents; class F, 36 cents; class H, 25 cents; boots and shoes, 45 cents; stoves and fixtures, 33 cents; sugar, 18 cents.

And from the same points to Danville, and over the same lines and routes, there are the following rates:

On class 1, 66 cents; class 2, 58 cents; class 3, 47 cents; class 4, 33 cents; class 5, 29 cents; class 6, 24 cents; class A, 24 cents; class B, 27 cents; class C, 24 cents; class D, 22 cents; class E, 29 cents; class F, 46 cents; class H, 33 cents; boots and shoes, 66 cents; sugar, 21½ cents; stoves and fixtures, 47 cents; thereby making a discrimination against Danville and in favor of Lynchburg of 22 per cent on class 1, 23 per cent on class 2, 23 per cent on class 3, 32 per cent on class 4, 32 per cent on class 5, 33 per cent on class 6, 33 per cent on class A, 23 per cent on class B, 33 per cent on class C, 33 per cent on class D, 32 per cent on class E, 20 per cent on class F, 33 per cent on class H, 46 per cent on boots and shoes, 22 per cent on sugar, 42 per cent on stoves and fixtures.

From Baltimore to Lynchburg over the same lines at the following rates per hundredweight:

On class 1, 49 cents; class 2, 42 cents; class 3, 33 cents; class 4, 22 cents; class 5, 19 cents; class 6, 16 cents; class A, 16 cents; class B, 19 cents; class C, 16 cents; class D, 16 cents; class E, 19 cents; class F, 32 cents; class H, 22 cents; on boots and shoes, 42 cents; on stoves and fixtures, 30 cents; on sugar, 16 cents.

From Baltimore to Danville over the same line the following rates:

On class 1, 60 cents; class 2, 52 cents; class 3, 41 cents; class 4, 29 cents; class 5, 25 cents; class 6, 20 cents; class A, 20 cents; class B, 23 cents; class C, 20 cents; class D, 18 cents; class E, 25 cents; class F, 38 cents; class H, 29 cents; on boots and shoes, 60 cents; on stoves and fixtures, 41 cents; sugar, 21½ cents, thereby making a discrimination against Danville in favor of Lynchburg of the following: 23 per cent on class 1, 24 per cent on class 2, 24 per cent on class 3, 31 per cent on class 4, 31 per cent on class 5, 25 per cent on class 6, and 25 per cent on class A, 21 per cent on class B, 25 per cent on class C, 13 per cent on class D, — per cent on class E, 31 per cent on class H, 50 per cent on boots and shoes, 37 per cent on sugar, and 36 per cent on stoves and fixtures.

And your petitioners aver that the several classes of freight aforesaid embrace nearly every variety of merchandise sold and consumed in the Danville and Lynchburg markets, and they call attention to the fact that the classes of freight are delivered to the merchants and inhabitants of Lynchburg at an average of 36 per cent less than to the merchants and inhabitants of Danville, although it is hauled through Danville to Lynchburg, 66 miles farther from the place of shipment than Danville.

5. That the said Southern Railway Company doth charge and receive from the inhabitants and merchants of Danville for the transfer of the following described property over its lines from Louisville, Ky., Frankfort, Ky., Chattanooga, Tenn., and Cincinnati, Ohio: On metallic paint from Chattanooga, 24 cents per hundredweight; on grain from Louisville and Cincinnati, 21 cents per hundredweight; on hay from Louisville and Cincinnati, 21 cents per hundredweight; on flour, 24 cents per hundredweight; on meat and lard, 27 cents per hundredweight.

And from the merchants and inhabitants of Lynchburg the said Southern Railway Company doth charge and receive the following rates from said points on its lines:

On metallic paints, 15 cents per hundredweight; on grain from Louisville and Cincinnati, 12 cents per hundredweight; on hay from Louisville and Cincinnati, 12 cents per hundredweight; on flour, 12 cents per hundredweight; on meat and lard from Louisville and Cincinnati, 15 cents per hundredweight; by which the Southern Railway Company discriminates against Danville and in favor of Lynchburg to the extent of 60 per cent on paint, 100 per cent on flour, 60 per cent on grain, 60 per cent on hay, and 80 per cent on meat and lard. In other words, the said Southern Railway charges the people of Danville an average of 72 per cent more for hauling the necessaries of flour, meat and lard, grain and hay, than it charges the people of Lynchburg, notwithstanding the

fact that the haul to Lynchburg is made through Danville to Lynchburg, a distance of 66 miles farther from the point of shipment than Danville; and your petitioners state that a similar difference is made against Danville by the said railway company on all goods transported into the city.

6. That the Southern Railway Company and its connections to the city of New Orleans doth charge and receive from the people of Danville the following rates and charges on the staples of molasses, sugar, rice, and coffee from New Orleans:

On molasses, 37 cents; on sugar, 43 cents; on rice, 43 cents; on coffee, 51 cents; and from the people of Lynchburg on the same commodities 26 cents, 32 cents, and 40 cents per hundred barrels, thereby discriminating against Danville in the favor of Lynchburg to the extent of 47 per cent on molasses, 36 per cent on rice and sugar, and 27 per cent on coffee, or to an average of 35 per cent against Danville in favor of Lynchburg, although Danville is nearer by 66 miles to the point of shipment and the haul to the farther point is made through the nearer.

7. That the said Southern Railway Company and its connections leading to Chicago and other cities in that part of the Union charge and receive from the people of Danville a much greater rate of freight than from the people of Lynchburg, a city 66 miles farther from said markets by said road than Danville.

For instance, on flour from Grand Rapids to Lynchburg, 32 cents per barrel; to Danville, 56 cents per barrel; on leather from Kenosha, Wis., to Lynchburg, 32 cents per hundredweight; to Danville, 50 cents per hundredweight; on meat and lard from Chicago to Lynchburg, 27 cents per hundredweight; to Danville, 39 cents per hundredweight; on grain from Chicago to Lynchburg, 17 cents per hundredweight; to Danville, 36 cents per hundredweight, and on many other articles of merchandise, all necessary to the wants of the people of Danville and their trade, the same rate of discrimination, making an average of 71 per cent more for delivered goods at the end of the short haul than at the end of the long haul.

8. That the same rate of discrimination shown by paragraphs 5, 6, and 7 to be made in favor of Lynchburg against Danville is also made by the said roads in favor of Richmond against Danville. Your petitioners are aware that against the wrongs complained of in paragraphs 6 and 7, in which it is shown that the Southern Railway Company and its connections to New Orleans and Chicago and other points and the Northwest make unjust discrimination against Danville, your honorable body can give no relief, because the connections of the Southern Railway Company in those transactions do not transact business in the State of Virginia, and are not subject to the Virginia laws; but as to those wrongs recited in paragraph 4 and paragraph 5, against the Southern Railway Company and the water carriers connecting at Norfolk and the Southern Railway Company alone, they are advised that as all of said corporations either derive their charter from the State of Virginia or do business in the State they are subject to State jurisdiction and amenable to State laws. They show that the wrongs and injuries complained of, by which other cities are given an unjust advantage of the city of Danville, have been going on against the latter city for thirteen years, until the consequence is becoming disastrous to Danville. It is depriving her of her trade, cutting down her population, increasing the costs of living to her people, diminishing the value of her real estate, and increasing the burden of taxation upon her citizens in order to meet the interest upon her corporate debt and the expenses of her municipal government. They show that new business enterprises will not come to Danville on account of the freight discrimination against her, and they assert that extensive enterprises have refused to come and have gone elsewhere for that reason.

They are advised that railroads are public highways, and the fundamental characteristic of public highways is the right of all persons to use those highways upon equal terms; and for railroads to deny this equality is a misuser of their franchises and good cause for their forfeiture; and for a State to permit a railroad of its own creation, or those doing business within its limits, to build up one of its cities at the expense of another, or to oppress one part of its inhabitants with burdens in order that favors may be bestowed upon others, is, they respectfully submit, an indefensible act of government.

Your petitioners further show that the city of Danville, in its own name, in concert with a number of its citizens, feeling aggrieved at the acts recited above, and finding that section 1208 of the Code of Virginia, 1887, which they believe would have given them partial relief in the courts of the State, had been repealed, laid the subject of said discrimination before the Interstate Commerce

Commission, and that tribunal, after hearing and rehearing the case, in two decisions sustained the charge of the city of Danville and ordered the said discriminations to cease; but the Southern Railway Company has refused to obey the order of the Commission and is preparing to appeal to the Federal courts, where the case may be long delayed, while in the meantime the ruinous discrimination will go on against the city of Danville.

Your petitioners therefore pray that the general assembly may reenact section 1208 of the Code of 1887, and give to the citizens of Danville a remedy in the courts of the State against the wrongs and injuries of which they complain.

And they will ever pray, etc.

The City of Danville, Va., by Robt. Brydon, clerk of council.
The Danville Tobacco Association, by O. Wemple, president.
The Danville Business Men's Association, by Jno. W. Carter, president; Jas. W. Carter, secretary.
Harry Wooding, mayor.
A. M. Aiken, judge corporation court.
D. A. Overbey, president city council.
P. H. Boisseau, city sergeant.
J. B. Anderson, commissioner of revenue.
Geo. P. Geoghegan, city treasurer.
R. H. Herndon, city collector.
R. H. Woolfolk, high constable.
C. A. Ballou, city engineer.
Frank Talbott, secretary water and light department.
N. F. Reid, fire marshal.
Lewis-Martin Shoe Co.
Holland's Warehouse.
Andrew Jamieson.
R. A. White Gun Co.
N. H. Turbiville & Co.
R. L. Ramey & Co.
C. C. Snead & Co.
Piedmont Hardware Co.
Overbey & Swanson Bros.
Jno. P. Swanson.
D. Arrington.
W. R. Wray.
Hodnett, Vass, Watson Co.
H. L. Ferrell.
City Shoe Store.
Hodnett Clothing Store.
B. Y. Fretwell.
L. D. Moorefield.
G. W. Bell.
Robinson's 5 and 10 Cent Store.
W. P. Robinson.
L. C. Clarke & Co.
A. E. Gray.
F. O. Kidd.
P. R. Jones' Sons.
C. G. Holland & Co.
W. A. Harnsberger.
J. R. Noell Manufacturing Co.
Hannah & Dudley.
W. H. Barksdale.
J. T. Orgain & Co.
C. D. Noell & Co.
H. T. Pearson.
N. P. Robertson.
W. J. Dodson.
Guerrant Bros.
W. C. Hurt Tobacco Co.
Waddill Printing Co.
Julian Meade.
Dan Valley Hardware Co.
H. W. Cole & Co.
Chas. C. Neal.
S. T. Nowlin.
Lanier Bros.
H. A. Wiseman & Son.
J. G. Witcher.
L. L. Lanier.
S. W. Martin.
F. Clarke.
Boatwright Bros. Co.
Schoolfield, Boatwright & Co.
H. S. Lanier.
J. Goldsmith & Co.
Jno. W. Ferrell Furniture Co.
Sumter George.
W. H. Cobb & Co.
W. T. Harris.
I. Rosenstock.
E. H. Miller & Co.
J. Brafman.
The Danville Haberdasher.
A. D. Keen & Co.
L. Herman.
J. N. Wyllie & Co.
J. B. Westbrook's Foundry and Machine Co.
Wheatley Buggy Co.
C. A. Howard.
J. L. Maden.
J. L. Bagley.
J. G. Covington.
W. W. Williamson.
A. W. Canter.
A. D. Starling.
C. W. Price.
W. D. Rowe.
J. E. Shaw & Co.
Jas. Brewer & Son.
J. L. Horner & Co.
Cabell, Cabell & Custer.
David Jones & Co.
C. A. Howard.
O. Wemple.
J. T. Hamlin.
F. W. Townes.
C. R. Gentry Brothers.
W. W. Watkins.
Francisco's.
T. A. Fox & Co.
Geo. T. Fitzgerald & Co.
O. D. Electric Co.
Hessberg Bottling Co.

L. T. Puryear & Co.
W. N. Brown.
Ruffin, Edmunds & Co.
J. B. Ruffin.
W. E. Meade.
Chas. Orchard.
J. A. Reagan.
Reagan & Walton.
Swann & Holland.
The Tobacco and W. H. Trading Co.
Greenhow Maury.
E. K. Jones & Co.
Chas. E. Hughes & Co.
Hickey & Cousins.
Danville Tobacco Co.
L. G. Martin.
W. R. Mitchell.
Geo. S. Hughes.
W. W. Gill.
J. M. Covington.
H. B. Henry.
T. C. Guerrant.
Geo. E. Tuckett & Co.
J. E. Bouldin.
H. L. Boatwright.
Turpin & Wood.
G. E. Turpin.
R. M. Hubbard & Co.
C. E. Slaughter.
Riverside Cigar Co.
Jno. B. Thomas.
H. W. Tucker.
G. S. Burch.
E. T. Crews.
T. S. Williamson & Co.
W. A. Hines.
S. M. Millner & Co.
J. R. Bowles.
A. G. Fuller.
Danville Hardware Co.
W. W. Waddill.
Chas. H. East.
W. H. Farley & Co.
Jno. W. Carter & Co.
J. A. Lawson.
Averett & Harvey.
D. H. Dugger & Bro.
C. L. Martin.
Maryland Creamery Co.
Star Laundry Co.
M. W. Berger Bargain House.
F. L. Gitt & Co.
C. W. Guerrant.
Danville Steam Laundry.
Crews, Williamson & Co.
Cash Grocery Co.
Northside Shoe Store.
J. R. Harris & Bro.
Walton & Lanier.
Booth Bros.
H. C. Ficklen.
Jno. B. Boatwright.
B. M. Walker.
J. G. Claiborne.
W. G. Holman.
Harry P. Guerrant.
Free Press Publishing Co.
B. C. Friend.
E. G. Moseley & Co.
W. P. Hodnett.
C. H. Hickey.
M. I. Hessberg.
Dibrell Bros.
A. B. Carrington.
Russell J. Coles & Co.
Barrow Lumber Co.
J. C. Bruce.
Maxwell Tobacco Co.
W. P. Tyree.

The petition which was presented before your committee on the 8th day of May was before the two legislative bodies of the city of Danville. One of the gentlemen who came to Washington to appear before this committee was present, and was one of the two men who voted against the passage of the resolution to send the petition to this committee. They had full and fair notice thereof. There was no attempt at secretiveness, because it was known that the overwhelming sentiment of the city of Danville was in favor of this petition.

Subsequent to the time when these gentlemen appeared, the developments which I stated in the beginning of my statement with reference to the subsequent resolutions of the board of aldermen, the common council, and the commercial association, and the meeting of the business men and citizens generally of the city, occurred, and they have been sent and presented to this committee.

Now, but one or two other facts. Mr. Pritchett, one of the gentlemen who spoke before this committee, stated that he was interested in outgoing freights—that is, in getting out of Danville products

produced in Danville; that he was not interested in incoming freight and consequently was not informed as to the status of those particular freights. I think I can safely say that the chief product of the city of Danville in the sense in which he used it is tobacco. The sales of tobacco in that town will average 45,000,000 pounds per annum, and each and every pound thereof is shipped out after being rehandled or manufactured from the raw leaf. In order to get that tobacco out of the city of Danville a favorable and fair freight rate of course is advantageous and highly beneficial, and in that connection I beg leave to submit the ninth section of the petition of the city of Danville to the Interstate Commerce Commission in 1899:

That the defendant, The Southern Railway Company, doth charge and receive from persons in the city of Lynchburg and the city of Richmond, Va., for the transportation of leaf tobacco over its line to Louisville, Ky., 24 cents per hundred pounds, and from complainants and others in Danville, Va., to Louisville, Ky., over the main line and in the same direction and under substantially similar circumstances and conditions, 40 cents per hundred pounds, the distance from Richmond to Louisville being 140 miles, and from Lynchburg 66 miles, greater than the distance from Danville to Louisville, and the shorter distance from Danville being included in the longer distance from Richmond and Lynchburg.

So that the chief product of the city of Danville, so far as its prosperity and growth are concerned, is as heavily discriminated against as the incoming freights from the North and West, about which Mr. Pritchett admits he knows nothing. In our hearing before this committee Judge Aiken was asked a question in reference to the coal rates of the city of Danville by the chairman of this committee, and in order to answer it I have brought with me the facts about those coal rates, showing that there is a discrimination against the city of Danville in coal rates from the West, and we are permitted to handle only Norfolk and Western coal. We never see a pound of Chesapeake and Ohio coal, or practically none. We never see a pound of Southern Railway coal. We are not permitted to haul any of the Tennessee coal, the West Virginia coal (other than from the Norfolk and Western territory), or from other western fields, and, further, the haul from Lynchburg to these fields is $1.60 per ton, while the haul to Danville is $2.30 per ton, a discrimination of 70 cents for a 65-mile haul.

I herewith file this coal schedule as a part of my remarks:

INTERSTATE COMMERCE COMMISSION, OFFICE OF THE AUDITOR,
Washington, January 24, 1905.

[Memorandum.—Letter of Alexander Helper, secretary-treasurer of the Commercial Association, Danville, Va. Rates on coal of the Chesapeake and Ohio and Norfolk and Western railways to Virginia points.]

Referring to the accompanying letter of Mr. Alexander Helper, secretary-treasurer of the Commercial Association, Danville, Va.:

Attached hereto are two statements (Nos. 171 and 172), one showing rates on coal published by the Norfolk and Western Railway from various districts to important points in Virginia, and the other showing the published rates of the Chesapeake and Ohio Railway on coal from New River and Kanawha districts to Virginia points, as requested.

Respectfully submitted.

J. M. SMITH, *Auditor.*

[No. 171.]

Statement showing rates on coal, carload minimum 30,000 pounds (except as noted), from and to points named below, via Norfolk and Western Railway.

[Rates per ton of 2,000 pounds.]

To—	From Pocahontas district.		From Thacker district.		From Kenova district.	
	Steam.	Domestic.	Steam.	Domestic.	Steam.	Domestic.
Cleveland, Va	$1.60	$1.80	$1.70	$1.90	$1.80	$2.00
Norton, Va	1.60	1.80	1.70	1.90	1.80	2.00
Bristol, Va	1.65	1.85	1.75	1.95	1.85	2.05
Saltville, Va	1 65	1.85	1.75	1.95	1.85	2.05
Roanoke, Va	1.60	1.80	1.70	1.90	1.80	2.00
Lynchburg, Va	1.60	1.80	1.70	1.90	1.80	2.00
Petersburg, Va	1.60	1.80	1.70	1.90	1.80	2.00
Suffolk, Va	1.60	1.80	1.70	1.90	1.80	2.00
Norfolk, Va	1.60	1.80	1.70	1.90	1.80	2.00
Winston-Salem, N.C	2.30	2.40	2.40	2.50	2.50	2.60
Shenandoah, Va	1.80	2.00	1.90	2.10	2.00	2.20
Manassas, Va.[a]	2.40	2.50	2.55	2.65	2.60	2.70
Charlottesville, Va.[a]	1.60	1.80	1.75	1.95	1.80	2.00
Danville, Va.[a]	2.30	2.40	2.45	2.55	2.50	2.60
Strasburg, Va.[a]	2.40	2.50	2.55	2.65	2.60	2.70
Warrenton, Va.[a]	2.40	2.50	2.55	2.65	2.60	2.70
Bluemont, Va.[a]	3.30	3.40	3.45	3.55	3.50	3.60

[a] Carload minimum, 40,000 pounds.

Norfolk and Western Railway, I. C. C., Nos. 1563–B and 1995–B.

[No. 172.]

Statement showing rates on coal, carload, minimum 30,000 pounds, from and to points named below via Chesapeake and Ohio Railway.

[Rates per ton of 2,000 pounds.]

To—	From New River district.		From Kanawha district.	
	Steam.	Domestic.	Steam.	Domestic.
Norfolk, Va	$1.85	$2.10	$1.95	$2.20
Newport News, Va	1.60	1.85	1.70	1.95
Richmond, Va	1.60	1.85	1.70	1.95
Orange, Va	1.60	1.85	1.70	1.95
Charlottesville, Va	1.40	1.55	1.50	1.65
Basic, Va	1.40	1.55	1.50	1.65
Staunton, Va	1.40	1.55	1.50	1.65
Clifton Forge, Va	1.30	1.45	1.40	1.55
Covington, Va	1.30	1.45	1.40	1.55
Hot Springs, Va	1.30	1.55	1.40	1.65
Lynchburg, Va	1.60	1.85	1.70	1.95
Lexington, Va	1.40	1.65	1.50	1.75
Newcastle, Va	1.60	1.85	1.70	1.95
Petersburg, Va	1.85	2.05	1.95	2.20
Fredericksburg, Va	1.85	2.00	1.95	2.10

Chesapeake and Ohio Railway I. C. C. Nos. 2794, 3020, and 3282.

Now, Mr. Chairman, this condition of the city of Danville is accentuated by the fact that it is a close competitor of the city of Lynchburg.

Senator KEAN. Is not that all there is in it?

Mr. WITHERS. No.

Senator KEAN. Have not you had this case before the Interstate Commerce Commission?

Mr. WITHERS. Yes, we have, and we won it.

Senator KEAN. You had it also in court?

Mr. WITHERS. Yes.

Senator KEAN. And the court decided against you?

Mr. WITHERS. Yes; on the ground, as I understand, that the conditions which were geographically, climatically, and commercially similar at Lynchburg and Danville have been destroyed by crushing all competition at Danville, without knowing, so far as the record shows——

Senator KEAN. But how are we going to create competition at Danville?

Mr. WITHERS. I think you can do it by approving the Interstate Commerce Commission's ruling, which said that a 10 or 15 per cent additional from the haul to Lynchburg and Danville was a fair rate.

Senator KEAN. The court said it was not.

Mr. WITHERS. It did, but it said it under the conditions I have recited, that the destruction of competition destroyed otherwise similar conditions, taking the reverse of the English courts in that respect, as I understand it.

Senator KEAN. How would you amend the law to have it decide that the court shall decide your way?

Mr. WITHERS. Why, sir, to let the Interstate Commerce Commission fix a rate and allow that fact to go to the Supreme Court and have that stand unless it is confiscatory and without due process of law takes the property of the railroad company.

Senator KEAN. There is no question of reasonableness?

Mr. WITHERS. No; except in that way, and let the question of crushing competition be thoroughly presented to the court, which we have not been able to present because of the dismissal of the suit.

Senator KEAN. Yes; but the State of Virginia suppressed the competition.

Mr. WITHERS. Well, the State of Virginia suppressed it only in this way, that after competition had been destroyed and the Richmond and Danville Railroad having gone into the hands of a receiver, and come out of the hands of a receiver, sought to reorganize itself under the name of the Southern Railway Company and asked that its old powers be conferred upon it, and in that way the legislature affirmed its act by conferring its old powers upon it. It is the same railroad and practically the same corporation reorganized under a new name.

Now, I desire to add, as a further statement, that the conditions which exist in Virginia are on a sliding scale to, practically, Atlanta, Ga.; that is, this sliding scale goes as far south, or practically as far south, as Atlanta, Ga. You have already heard from the testimony to-day that the city of Charlotte, N. C., is complaining of discriminations of freight rates four times as great as to the city of Lynchburg, and there is no water competition to Lynchburg. We, as a competitor, naturally feel the effect of that conflict more acutely and know it more readily than the cities far to the south of us, because the competition between them and Lynchburg is not so great. We represent a condition that exists all over the South Atlantic States between the points named, if not farther, and we are bearing the brunt of it because we are nearest to the man or the community having the greatest advantage over any of the cities discriminated against.

If the resolutions of the mass meeting have not been sent here and presented to this committee, I suppose I may be permitted the privilege of filing them.

Senator KEAN. Yes.

Mr. WITHERS. That is all I desire to say.

Senator KEAN. You are excused.

STATE-MADE RATES IN FRANCE.

Senator KEAN. With the permission of the committee, I will ask to have incorporated in the record of the hearings the following extract from the New York Sun newspaper of May 21, 1905:

STATE-MADE RATES IN FRANCE—FRENCH RAILROAD EXPERT TELLS OF THEIR EVILS—COMPANIES AND THE PUBLIC ALIKE SUFFER BECAUSE THE GOVERNMENT REGULATES THE CHARGES—EFFECT OF POLITICS IN FIXING RATES—AMERICAN SYSTEM BEST.

WASHINGTON, *May 20.*

Of all foreign countries that have tried railway regulation by Government authority, the one in which the situation is most useful for comparison with the United States is France.

In France the railways are not owned by the Government, but railway rates are fixed by governmental authority, as has been proposed for the United States. M. Emile Heurteau, president of the Orleans Railway and one of the foremost railway administrators of France, who came here as a delegate to the International Railway Congress, gave an interview before leaving Washington to-day in which he explained the working of railway regulation in his country.

"The maximum charges which the railways of France may make for carrying merchandise," said M. Heurteau, "are fixed by a contract made by each company with the Government, this contract being in effect the company's charter. The Government designates the exact course along which roads shall be built, in some cases laying it through territory which would not be profitable for private management to operate in without some sort of subvention.

"This subvention the State gives in the form of an advance or loan, on which the company must pay 4 per cent interest and which must be returned within a specified period. During that period the company may not declare dividends above a fixed figure, the surplus that might otherwise go to dividends being used in reducing the loan.

"At the end of the specified term, usually ninety-nine years, the railroad becomes the property of the State outright, except for its rolling stock, on which the Government holds a lien, to guarantee the payment of any of the advance remaining unpaid at that time.

"This makes possible, you see, the building of railroads in places where the Government restrictions would otherwise make it impossible. Naturally, it is the taxpayer—the merchant and shipper who think they are getting so much benefit from the State's interference in the railroad business—who pays for all these things.

"It is the taxpayer—the merchant and the shipper—who pays for the construction and maintenance of canals and canalized rivers—the latter natural water courses artificially deepened or straightened—which in some places make the existence of a profitable rail-

road almost impossible, and in others centralize industry and traffic to the detriment of sections of the country that do not have similar advantages.

"There is no provision at all for the State's regulating charges for water transportation. The waterways are, in the eye of the law, public highways. The vessel owner may charge as much as he pleases for the services he gives, and, inasmuch as it costs him much less to render than like service costs the railway, he can depress his rates and raise them with impunity, so as seriously to affect the trend and movement of traffic.

"This is not, however, competition in the true sense. It produces such results as these:

"In the region north of Paris, which is the great industrial section of France, a very large proportion of the traffic is carried by canals, which you abandoned long ago in this country as out of date, which are slow and subject to all manner of hindrances from the necessity of repair, the jam of ice in winter, and what not. In southern France a very large share of the freight between Marseille and Paris, for example, moving in either direction, goes around the coast line instead of directly by rail.

"You can easily see the effect of this. The people are practically deprived of the more efficient means of transportation in the interests of the less efficient. This would, of course, mean much more in the United States than it does in France even, for your great Middle West, especially.

"What, you ask, is the cause of this? It is that the Government will not allow the making of railroad rates that will take the traffic off the canals, and its refusal to allow this is due to political pressure sometimes, to the jealousy of one community toward another, to the powerful influence of the vessel owners to whom the present arrangement is of such vast financial benefit, to the difficulty of ever getting a governmental machine to reverse its action or to modify its mechanical methods.

"The inelasticity that Government ownership or close Government supervision invariably brings makes it impossible that French railroad rates should go below the point at which the boats on the waterways do business.

"Not only does the Government never give its consent to the raising of rates, as might be expected, but also, extraordinary as it may seem to Americans who have had no experience with governmental control of such things, it frequently withholds its consent from lowering them. Our only protection is that our contracts with the Government have fixed maximum charges so long as the present agreements are in force.

"We would be only too glad to adopt the American system of fixing the lowest rates proper and making up the loss of profit on each shipment out of the increased volume of business they make the railways available to, which is the only economically and commercially right and sensible way of doing. We would be glad to build up our territory as the American railways do, by encouraging its industries, by opening its markets, by enabling it to compete with other territories contributing to the same markets.

"But we can not do that. The State controlled rates prevent it, however strong our desire or the people's may be.

"The basis on which freight rates are made in France is generally that of distance. In fact, it is impossible that any Government or Government commission should make rates on any other basis.

"This tape-measure basis is the easiest to defend against charges of discrimination, in spite of its real injustice and its absolutely unsound economy which a moment's thought will show. It avoids trouble and affords excuses, and your Government official's chief thought is to avoid trouble for himself for he is first, last, and all the time a politician.

"Railroads under Government supervision must set their rates close to the maxima then and maintain them there, for their own salvation. There are many times when if it were possible we would like to lower freight charges to meet some special emergency, such as the necessities of a district suffering from a crop failure, for example.

"That is not philanthropy, but commercial sense, to help the man who creates business for you when he is hard pressed, and to increase the volume of traffic that is falling because people have not the money to pay the price they have been accustomed to pay easily. But if we should once lower our rates—possibly to the point of loss, as American railways have done frequently in crises—we would not be allowed to restore them later, when they should fairly be restored.

"Occasionally, temporary rates are made for the term of a year, say, but it is quite exceptional. And why, do you suppose?

"The process of reducing rates under our system of Government regulation, which is as liberal as any European system of the kind, involves so many hearings, discussions, and disputes by rival boards of trade and chambers of commerce, deputies, politicians, shippers, and the rest of them that it takes many months and sometimes years to get permission to make a reduction in charges.

"By that time the necessity for which the reduction was asked is passed. It will do neither the railroad nor the community any good; and so we do not ask for such things.

"It may seem curious to Americans, but no reduction of rates has ever been made in France to meet the needs of the railroads, however much they might want it. A striking instance of how Government regulation works in this particular is the experience of my own road in common with others a few years ago, when the phylloxera attacked the vineyards of southern France.

"There was no wine making to speak of in France then, and the country's supply was imported from Spain. Over there wine is a staple, a necessity of the poor man as well as the rich, and we made a low rate for bringing it from Spain into Paris.

"The deputies of the vineyard districts protested, however, because they said we were carrying Spanish wine as cheaply as we were carrying French wine. The railroads were obliged to restore the high rate, and immediately the wine went to Paris from Spain by water, through the canals and canalized rivers.

"In order to make this water transportation easier, the Government made large extra appropriations for the canalization of the Seine at that time. The citizen whose temporarily nonexistent industry was being 'protected' partly for the benefit of foreign shipowners, it would appear, was, as a taxpayer, contributing his francs for this canal construction and repair when he could least afford it.

"As I have told you, our charges for transporting freight are fixed in the railway's original contract with the Government and set down in the cahier des charges—what you would call tariff sheet or rate book I suppose. For obvious reasons the railways never have consented to give the State the right to lower these maximum charges, not can it be expected that they ever will consent to such a thing.

"Our contract with the Government is like any other contract. It can not be altered except with the consent of both parties. Any form of government supervision short of absolute government ownership must be based on contracts of that kind, otherwise what protection would there be for the vested interests.

"Petitions for lower rates are made to the director of railways from time to time, and perhaps he will suggest the desirability of considering some of them, but he has no power to enforce such demands. Of course sometimes we must yield to such petitions against our better judgment, when they are evidently nothing less than sectional selfishness. The pressure which any government can bring to bear is tremendous, and may not be withstood in certain circumstances, even though it may threaten industrial misfortune.

"The wonderful growth and development of the United States is the admiration of the whole world. I have no doubt it is to be attributed largely to the freedom you have always enjoyed in your commercial and industrial life.

"Opportunity is given here for railways and communities to be mutually helpful, and splendid use has been made and is being made of it. The few cases of complaints against your railways, the expansion of trade through the opening of European markets to the producers of your Central and Western States, who are enabled to deliver their products abroad, the low cost of transportation that enables them to compete there with the foreign producer near at hand, whose railways are in no position to help him—all these things seem to me sufficient evidence of the success and desirablity of the American practice in the management and regulation of railway matters.

"Any economist, any business man, any transportation manager will tell you that the present American method of fixing freight rates is the only logical and rational one."

STATEMENT OF MR. EDWARD G. DAVIES.

Senator KEAN. You may state your name, residence, and occupation.

Mr. DAVIES. I reside in Chicago, and I represent 70 fruit associations in Chicago as general consignee.

Senator KEAN. You may proceed with your statement, Mr. Davis.

Mr. DAVIES. I have read newspaper accounts of the statements of certain railroad witnesses before this honorable committee and have been agreeably surprised to find that I have hitherto been mistaken in regard to the policy of railroad companies generally in respect to the conservation of property rights vested in them as investments of wards and widows. I may be permitted to say that every worthy custodian, administrator, or manager of other persons' property should do everything that is possible and right to conserve those interests,

whether belonging to fatherless children and widows or childless widowers and spinsters. Every dollar invested in any enterprise that is sanctioned by law in this country has a right to demand honest and honorable administration in the affairs of such business, and I presume that the legislation contemplated by the Congress of this country is to call sinners and not the righteous to repentance. I desire to offer the committee what in my humble mind may be in a measure helpful in obtaining such legislation as will protect the interests of all the investors in railroad properties without distinction to the age or condition of the stockholders, and here I may say that I do not believe that among those who support the President's recommendations for legislation to that end that there can be found a man who seeks to injure railroad interests through legislation that is asked for or expected. Those who demand legislation that will give the country competent regulation of interstate commerce and afford relief from the conditions of lawlessness that now submerges equality and the rights of a majority of our countrymen to the distinct advantage and in favor of a preferred few are the only true friends of investors, whether they are widows, wards, or Wall street speculators in the railroad property of America.

On the other hand, it is a self-evident fact that the so-called fatherless and widows who appeal so strongly to the commiseration and benevolent propensities of railroad officials, who have been succored by them for years, are the unweaned infant industries of the nation, and the wet nurses who have attended them. For years these babes and sucklings drew their living from the breasts of railroad perfidies. Since the passing of the Elkin's bill they have changed the teat and now thrive upon commercial cannibalism in the form of private car lines and industrial railroad concessions. I notice that railroad officials stand aghast at the prospect of the granting of rate-revising powers to the Interstate Commerce Commission. They cry aloud in desperation for rate experts. A rate expert only lives in poetical mythology. I have met hundreds of traffic officials, but never discovered an expert rate maker. If the members of the Interstate Commerce Commission, after the large experience they have had for and against the reasonableness of rates, are incapable of judging the merits of the conflicting parties, they deserve to be dismissed from their position as incompetent for the positions they hold. I propose to submit to this committee some evidence of the handiwork of so-called expert rate making on the part of the railroads as may be seen in the tariffs published by them. I am surprised that railroad officials should denounce the present Commission as being incompetent. I have the best of reasons to believe that the railroad companies have not suffered hitherto on that account. And it is hard to credit them with sincerity in this line of objection. The more incompetent the Commission may be, the more helpful will it be to the railroad companies in their well-known tactics of delaying relief to their victims.

The simulated benevolence of the officials of railroad companies is shown by an experience related to me by an ex-general live stock agent of a western road. I would not relate this to the committee had not I first obtained the consent of the party to go upon the witness stand and swear to the truth of the statement should he be called upon to do so.

Senator CLAPP. Does your statement give his name?

Mr. DAVIES. No; I will do that, with pleasure, if the committee desires it.

A few years ago one of the Chicago packers was a director on a western railroad. He was a large receiver of live stock from Kansas City, upon which the freight rate was $54 per car. A rebate of $25 was paid to the packer at the time of shipment, and it was the custom to file claims for the remaining $29, which were allowed on the grounds of some imaginary loss or damage to the stock in transit. The same party will testify that he paid rebates amounting to from $30,000 to $50,000 a month for every month in the year. He will say that on putting down on a piece of paper the amount of $10,000 and after placing this under the eyes of a superior officer, that he would leave and subsequently look for that amount in currency by express, and would then proceed to divide it among certain favored shippers. He will testify that under an arrangement which he had with the general manager of that railroad company that he made for himself $15,000 a year out of shippers by running the feeding and shipping yards for live stock in that system.

Senator CLAPP. How long ago is that?

Mr. DAVIES. Since the passage of the act to regulate commerce in 1892.

Senator CLAPP. Was that before or after the passage of the law of February, 1903?

Mr. DAVIES. It was prior to that.

Senator CLAPP. Well, if you have data there as to any cases of rebate since that time the committee will certainly appreciate your telling of it, if you will give to us also the names of the parties.

Mr. DAVIES. I am leading up to something. In the ninth annual report of the Commission we read as follows:

> Such an episode, for example, as that which recently startled the country, in which the official of a railway corporation deceived investors by erroneous charges amounting to millions of dollars, would not have been possible after ten years of successful operation of a system of public supervision over accounts.

If officials of railroad corporations under Government regulations are guilty of such practices as are here charged, why have they not been punished? How many railroad officials have reaped a harvest like this at the expense of the widows and orphans which they so feelingly in this investigation have referred to? In the operation of railroads in this country there are many devices through which widows and their dependents are cheated out of their just earnings and dues. There are fast freight lines that are operated by private individuals among whom are said to be the highest officials of certain trunk railroads. The cars of these fast freight lines are sent out West and are there loaded and shipped east over certain railroads. Commissions are paid by the carriers on this traffic amounting to one-eighth of the entire earnings of the carrier, and that commission is divided among a few railroad men operating the so-called "fast freight lines." Under this system all other stockholders, including the widows and orphans, are forgotten, and the few men with controlling interests pocket the mite of the widows and their dependents. The management of every railroad in this country has a contract with some express company. Under these arrangements train loads of

property are transported for the express companies by the railroads on special passenger time. The stockholders of these express companies are said to be found among officials in the railroad service. One of them is a United States Senator.

Senator KEAN. What is the authority for all of these statements?

Mr. DAVIES. I can give you all the authority you want.

Senator KEAN. They seem to be rather broad statements.

Mr. DAVIES. These statements are capable of proof—every one of them. I would not dare make any statement before the committee that is not susceptible of proof.

Senator KEAN. I do not think you should make such statements unless you are willing to provide the proof.

Mr. DAVIES. I am willing to provide proof and the people who have done these things.

Senator KEAN. These are rather serious charges.

Mr. DAVIES. I appreciate the seriousness of them. I have come here for that purpose. I came here on purpose to make these statements, and I thought it would not be proper to allow this information to go without submitting it to the committee of the Senate.

Senator KEAN. We are not trying to find charges against people; we are trying to find a way in which we can improve the interstate-commerce law.

Mr. DAVIES. That is exactly the position.

Senator KEAN. In regard to the transportation of freight and passengers in the United States, and in that way regulate the commerce of the United States. We are not seeking to do any injury to any man.

Mr. DAVIES. That is exactly my position, Senator.

Senator KEAN. I do not think we care to have any personal charges made here. I do not think we care to have charges made against individuals who have no way of answering these charges here.

Mr. DAVIES. I do not know as to that, Mr. Senator.

Senator KEAN. I want to be perfectly fair with you.

Mr. DAVIES. Yes; and I want to be just as fair with you.

Senator KEAN. I do not want you to do any injustice to anybody else, Mr. Davies. These people you charge with these things are public officials.

Mr. DAVIES. Yes; but that makes no difference. They are susceptible to the same charge as other people, I presume, when they violate the proprieties or the law.

Senator KEAN. You may proceed, but kindly leave out as much of that as you can.

Mr. DAVIES. I want to put that in, if the committee please, for this reason: I believe that the Government of this country wants and is desirous of seeking a way of giving relief to the people. Before that can be done it is necessary for you to know in what direction relief should be sought. Investigation into the peculiar practices that obtains in the operation of this increasing system of transportation of interstate commerce will rob of significance every other shameful exposure that has hitherto startled the country. I will illustrate a few. An express company has franked on more than one occasion a carload of horses, the property of an Interstate Commerce Commissioner, from the city of Washington to the State of Minnesota, and

to other points and back, under the name of another party.[a] A carload of 28 horses has been shipped by express at a minimum carload weight of 10,000 pounds. Train loads of strawberries are shipped every day in the season from Louisiana points to Chicago at an expense of about $400 per car to the shipper. Out of this $180 satisfies the railroad company that performs 97½ per cent of the entire service, while $220 is grabbed by the express company for performing service equal to 2½ per cent of the charges. Express companies are not required to file tariffs with the Interstate Commerce Commission. They are not under the regulation as provided in the act to regulate commerce, and this immunity from consequences is convenient to interstate carriers who can conduct business under the guise of an express company and violate with impunity every provision that the act contains.

Senator FOSTER. Do I understand you to say that the entire strawberry crop of Louisiana is carried to Chicago by express?

Mr. DAVIES. It has been until recently. Now they are shipping by freight.

Senator FOSTER. Is it not a fact that the great bulk of the strawberry crop of that State is shipped over the Illinois Central as freight?

Mr. DAVIES. It has been recently, but now I think it is fair to say that 60 per cent of it goes by freight.

Senator FOSTER. My impression is that the strawberry crop of that State is shipped as freight.

Mr. BERRY. Recently; quite recently; that is true.

Senator FOSTER. How far back was this practice that you complain of?

Mr. DAVIES. The practice continues to-day. Those are the charges I presume we are charged to-day. The express company gets 45 per cent of the gross charges.

Senator FOSTER. Do I understand that you make a statement that

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[a] WASHINGTON, D. C., *May 25, 1905.*

Hon. S. B. ELKINS, *Chairman*, and
SENATORS OF THE COMMITTEE.

SIRS: I am informed that at the last night session of open hearings, not yet in print, a witness, among various charges reflecting upon the Senate, the Commission, and the railroads, declared that a member of the Interstate Commerce Commission had franked carloads of stock by express. It is well known that the only member of the Commission ever interested in live stock was my father, J. D. Yeomans, who is abundantly able to defend himself, but who is now in the West, and it seemed to me such an act of injustice for the committee to publish such a slanderous charge that I beg either that it be stricken from your files or that the inclosed receipt for the charges in the transaction in question be given as wide publicity.

Very respectfully, yours, JAMES H. YEOMANS.

WASHINGTON, D. C., *Oct. —, 1903.*

Received of the High Point Plantation Company three hundred and eighty-five $\frac{70}{100}$ dollars, freight charges on live stock from Iowa.

Paid by check of J. D. Yeomans.

$385.70.

J. REICE CATON,
Agent Baltimore and Ohio Railroad Company.

the bulk of the strawberry crop of Louisiana is shipped by express and not by freight?

Mr. DAVIES. No; I would not say that; but until recently that was true.

Senator FOSTER. The strawberry crop is rather a new industry in that State.

Mr. DAVIES. They have been growing strawberries and shipping them to Chicago, to my knowledge, for the last fifteen years.

Senator FOSTER. It must have been in very small quantities fifteen years ago.

Mr. DAVIES. I have handled carloads of strawberries myself for twelve years by freight from Independence and other places.

The agent of a railroad company is usually the agent for the express company at shipping points. His stipend from the railroad company is perhaps $30 per month. His compensation from the express company is a commission, usually 10 per cent of the express charges, or equal to $40 a car for a carload of strawberries from Louisiana to Chicago. In that relation to his dual employers he discourages shipments by freight and encourages shipments by express. When acting as express agent he bills barrels weighing 180 pounds at 75 pounds, which as railroad agent he bills at the proper weight of 180 pounds, so that the express business, while costing the railroad companies four times more than the service on freight trains, is carried by the carriers for actually less money than is charged for service by common freight. A package of 24 pints of strawberries when shipped by freight on a train operated daily for that purpose will cost the shipper $1.20. If forwarded by express it will cost the shipper 35 cents, of which only 15¾ cents goes to the railroad company as against the $1.20 demanded of the shipper if handled directly on the freight trains. Rebates are paid by express companies, and fraud and misrepresentation is known and encouraged by the agents of the railroads that are defrauded, when acting at the same time as express agents. Railroad companies accept, without question, the proportion that is said to be due them upon the word of the express people, which is the sole basis of settlement.

Senator FOSTER. What is the freight per pound now?

Mr. DAVIES. The freight rate from Louisiana points south of Jackson, Miss., to New Orleans is 51½ cents per hundred pounds, and with the refrigeration added it is 67½ cents.

Senator FOSTER. How much does that make a car?

Mr. DAVIES. One hundred and fifty-two dollars, including the refrigeration and the shipment.

Senator FOSTER. When do they charge $400?

Mr. DAVIES. By express. That is their charge to-day.

Senator FOSTER. And what per cent is it by express?

Mr. DAVIES. I do not know. I could not say the percentage, but the percentage of revenue to the railway company is 45 per cent of that, or $180 a car.

Senator KEAN. What did I understand you to say your business was?

Mr. DAVIES. I represent the shipping associations. I am the general consignee. I am the representative in Chicago of these various associations for the distribution of their property among the commission men.

Senator KEAN. What is the nature of that business?
Mr. DAVIES. Why, it is the transportation business.
Senator KEAN. Is your business transportation?
Mr. DAVIES. Yes.
Senator KEAN. That is, you have goods consigned to you?
Mr. DAVIES. By the associations, yes, sir.
Senator KEAN. By a number of shippers?
Mr. DAVIES. Yes.
Senator KEAN. And then you sell it for them?
Mr. DAVIES. No, I am there to represent the shippers. The goods come consigned to me in Chicago for distribution among the several consignees, or the commission men in Chicago.
Senator KEAN. About how many carloads do you receive, and about what is the extent of your business?
Mr. DAVIES. I paid the Illinois Central Railroad about $25,000 last month.
Senator KEAN. Did you ever have any trouble with them?
Mr. DAVIES. Yes.
Senator KEAN. In what way?
Mr. DAVIES. I have had trouble in this way. I have asked them to check off the shipments from the car. My policy is to do right with the railroad companies. Out of the amount that I have paid to the Illinois Central Railroad Company I can state to them and to this committee that I have never defrauded them of 5 cents. The trouble that I have had with the Illinois Central Railroad is on account of their tariffs, largely, which have been removed since then. For instance, they had three rates on one commodity in carloads brought at the same time. They had in effect at that time a rule where if a man shipped 1 peck of potatoes in a car of 16,000 pounds of strawberries it made a difference of $40 a car. If there were no potatoes in the car it cost the shipper $40 more than if there had been 1 peck of potatoes in the car, and along that line is the kind of trouble that I have had with the Illinois Central Railroad. To-day there is no trouble whatever.
Senator KEAN. These are ancient tales. They are not present evils.
Mr. DAVIES. One of these evils I am referring to in a general way. They are not personal to myself. These are the several troubles that confront the people of the country.
Now, in regard to the expert tariffs or expert rate makers that the railroad people are calling for, I have here a few tariffs that confront me in my business. I have here the tariff from Florida points to Chicago. I presume that the wisdom of the Senate is represented in this committee on this question, and I will submit to this committee this tariff and ask the most learned of you to tell me what the rate from Florida to Chicago is on any commodity that that tariff contains. I have here a tariff of the Nashville, Chattanooga and St. Louis Railroad Company—the Interstate Commerce Commission number is 902–A—effective March 18, 1904. In this tariff these are rates applying only from Jackson, Martin, and Paducah junctions. Those are three competitive points. This tariff is applied upon a basis of reasonable rates. It fixes 18,000 pounds minimum in carloads of strawberries, for instance. Eighteen thousand pounds in any car that is built is more than should be shipped in a refrigerator car.

Senator KEAN. And why do you say that?

Mr. DAVIES. Because experience shows that 540 cases of berries is about all that a car can possibly carry with safety to any destination beyond one day's run. Experience has demonstrated that a thousand times to the receivers of goods.

Senator KEAN. They are making improvements on these cars all the time.

Mr. DAVIES. Yes.

Senator KEAN. Increasing the size.

Mr. DAVIES. We will see how they are doing that. This company issues this rate and it says here:

NOTE 2.—These rates apply on shipments where the carrier is entirely and fully released from liabilities except as to cars included, in which case the value shall be limited to $500 per car, the shipper to give his assent to such release in writing, etc.

The rates in this classification show a rate on shipments to Chicago exactly twice the price that it is from Cairo to Chicago, a distance of 365 miles. It is exactly twice the price for another 100 miles south of that. And another significant fact is that this is the only tariff I have seen in the country where private car lines are recognized and where they prescribe certain minimums as applied to them.

Senator KEAN. Whose tariff is that?

Mr. DAVIES. The Nashville, Chattanooga and St. Louis Railway.

Senator KEAN. And what do you think ought to be done to the private car lines?

Mr. DAVIES. I am not speaking of them just at this moment.

Senator KEAN. Oh, I thought you were.

Mr. DAVIES. No; I am speaking of the desirability of certain experts, as the Interstate Commerce Commission should be, in knowing the old conditions of this country and the expert classifications; that they should be able to follow that position in determining what a reasonable rate should be as against these experts that are making these tariffs at the present moment, of which I may say that the man himself will make the tariffs; when the ink dries upon the tariff he has made he can not explain to anybody. And that has been my experience with these railroad men. Here is the minimum weights on peaches, etc., in carloads: A carload, minimum weight, is 20,000 pounds when loaded in F. G. E. private cars, 14,000 series, 15,000 series, of Kansas City Fruit Express, 20,000 series, 36-foot car, carload minimum weight 22,500 pounds when loaded in F. G. E. cars, 16,000, fruit growers' express, 17,000, Kansas City fruit express, 21,000 series, 40-foot cars. Now, there are exclusive contracts. This railroad will not furnish those cars at those points—Martin, Jackson, Paducah Junction. They are confronted with the competition of the Illinois Central, which charges 15 cents a hundred for 20,000 pounds minimum weight of car, or $30 a car, as against $84, the charge of the private car lines from the same point or from points immediately in that neighborhood on such roads as the Nashville, Chattanooga and St. Louis.

Senator KEAN. Then you think the charge of the Illinois Central road of $30 is reasonable?

Mr. DAVIES. Yes.

Senator KEAN. And the other is unreasonable?

Mr. DAVIES. Yes; and at $30 a car it is highly profitable.

Senator KEAN. What would you suggest in regard to these private car lines?

Mr. DAVIES. I would suggest that the Interstate Commerce Commission be a reality; that it be something more than it is, simply a shell, misleading people into the belief that they have within them a kernel.

Now, I want to say in regard to the Interstate Commerce Commission that I have sought that relief which under the act to regulate commerce I was led to believe was possessed by the Commission. I have gone to the Commission and I have asked them since the passage of the Elkins bill, to put into effect the penal provisions of that act. The Interstate Commerce Commission has sat back until the statute of limitations has run against the charges preferred against them, and in face of secret contracts, as I showed, that the railroad companies both of them conspired with another man to rob shippers at both ends of the line, and by a commission man who told a party that he had an opportunity of getting even with me, and he was going to do it. I have here the opinion and briefs on either side, but I have not the opinion by Judge Yeomans of the Commission, in which he settles this case and predicates this decision upon a case that has not yet been decided by the Interstate Commerce Commission, and he rules that the charges that I have preferred against these railroads wherein I have shown and proved conclusively that there has been discriminations of $28, I think was the amount, in shipments involving but $32 of freight. They say they have not done intentional wrong. I called the attention of the Commission a year ago last March to a violation of the law, to misrepresentation and to fraud, and I invoked through the Commission the criminal law. The reason why I did that was because I was told by the district attorney of Chicago that it was none of his business to handle cases of that kind, that the Commission should set in motion the criminal law. And I received back in Chicago about two weeks ago these very papers that have been in the possession of the Interstate Commerce Commission over a year. I understand that they submitted them to the district attorney at the place where these violations occurred, and they did nothing.

Senator KEAN. I can not see then what your point is. You submitted these things to the Interstate Commerce Commission and they submitted them to the district attorney and they have not acted upon them.

Mr. DAVIES. I have them right here, and I have them out of the office of the assistant attorney-general in Chicago, and he is going to take them before the grand jury in Chicago. What I complain of is this, and I will show this committee. This is taken from the report of the Interstate Commerce Commission on page 45 of the thirteenth annual report in regard to criminal procedure:

> The Federal grand jury sitting at New Orleans, in the eastern district of Louisiana, returned an indictment on February 24, 1897, against J. T. Stubbs, William Mahl, C. W. Bein, and H. A. Jones, officers of the Southern Pacific Company, and on June 18, 1898, 11 other indictments were found in the same district against the same parties. All of these indictments charged violations of the act to regulate commerce through payment of rebates and departures from established tariff rates. The Commission is not able to state why these cases have not been brought to trial.

In the fourteenth annual report, on page 151, the Commission gives this startling information:

The indictments pending in the eastern district of Louisiana against officers of the Southern Pacific Company, as mentioned in our last report, have not been brought to trial. In May last the United States attorney for that district notified our special agent that he had been directed by the Department of Justice to withhold action until further instructed.

Now, we find on page 122 of the seventeenth annual report what is suggestive of some staggering reproof administered to the Commission for finding fault with the Department of Justice:

In conclusion, the Commission takes pleasure in saying that the Department of Justice has promptly and cheerfully complied with every request for the prosecution of civil and criminal proceedings and has in various ways materially aided the efforts of the Commission to enforce the regulating statutes.

I will call attention to the fact that the Interstate Commerce Commission handed over to the Department of Justice a case involving gross discriminations against independent operators of salt mills at Atchison, Kans., and handed that evidence over to the Department of Justice, involving the price, and asked the Department of Justice to take those things up.

It was a switch, pure and simple, connecting the salt works with a track, and they organized a company. It was a paper railroad, and I believe that it was 35 per cent of the rate that they prorated with them—with the salt works at that point. They handed that over to the Department of Justice last June, or a year ago last June. I have not heard a thing since about that.

Senator KEAN. Are you in the commission business for other things besides fruit?

Mr. DAVIES. No; I am not in any business except in the transportation business, dealing entirely with the railroads.

Senator KEAN. That is a new business to me. I never heard of that kind of business that you do. Do you not handle the goods?

Mr. DAVIES. Yes; I handle a great many goods. I handle as much as 50 carloads a day.

Senator KEAN. Well, how? You say you are in the transportation business. Do you furnish these people with transportation?

Mr. DAVIES. No; I am the consignee of these shippers for the different associations in the country.

Senator KEAN. What associations are they?

Mr. DAVIES. Well, on the Illinois Central I have them at various points. One at Kenner, and one at Crystal Springs, and other places. I could not tell you all of them.

Senator KEAN. What do they ship?

Mr. DAVIES. Fruit and vegetables.

Senator FOSTER. Are there any complaints made by shippers down there against the railroads, or against the Illinois Central, for failure to supply all necessary facilities?

Mr. DAVIES. No; not necessarily the Illinois Central Railroad.

Senator FOSTER. Does the Illinois Central Railroad furnish all the cars that are necessary?

Mr. DAVIES. Yes.

Senator FOSTER. For shipments of strawberries, we will say?

Mr. DAVIES. Yes.

Senator FOSTER. And they charge about $180 a car?

Mr. DAVIES. No; by freight we pay them $152, including the refrigeration charges, and, in my judgment, that is a reasonable rate.

Senator FOSTER. Then that is a reasonable rate, and they furnish all the facilities for transporting the strawberries?

Mr. DAVIES. Yes.

Senator CLAPP. From where to where?

Mr. DAVIES. Louisiana points to Chicago.

Senator FOSTER. If that be so, why would the shippers ship their strawberries by express and pay $400?

Mr. DAVIES. For instance, it is a three-day run from Louisiana to Chicago—take three days to reach Chicago.

Senator FOSTER. Three days?

Mr. DAVIES. Yes; by freight. There are conditions that enter largely into the transportation of strawberries which sometimes make it necessary to ship by express. For instance, their condition at the time of shipment; sometimes they are ripe, and sometimes they are water-soaked, and sometimes the owners fail to pick for a day, and they have to let these go over, and three days' time would jeopardize their shipment by freight as we have it now.

Senator FOSTER. What is a carload of strawberries worth?

Mr. DAVIES. A carload of strawberries from Louisiana in good condition in Chicago would be worth $3,000—that is, good strawberries—from $2,000 to $3,000.

Senator KEAN. How much does the shipper get on that?

Mr. DAVIES. He gets all of that except the cost of transportation, and 10 per cent commission, with the drayage charge of 2 cents a car from the depot to the store. Now, it is very essential that these people should get strawberries through in good condition.

Senator KEAN. Is that where your transportation comes in—the 10 per cent?

Mr. DAVIES. No.

Senator KEAN. Where does your transportation come in?

Mr. DAVIES. I get 2½ cents a hundred pounds for handling my business in Chicago from the associations.

Senator KEAN. Whether you sell it or not?

Mr. DAVIES. I do not sell anything.

Senator FOSTER. I wanted to get an answer to that question I asked you about the shippers. By express you say that it costs them $400 a car, when they have all the facilities there and can get the same where they freight ship for $152?

Mr. DAVIES. I tried to explain that.

Senator FOSTER. Then I did not hear your explanation.

Mr. DAVIES. There are conditions governing the shipment of strawberries, which is a very highly perishable property, that make it necessary to get very fast service. If the railroad company would give the same rate to the shippers that they are giving to the express companies, or, in other words, if they would give us a thirty-six hour schedule instead of a fifty-two hour schedule, we would be willing to pay the railroad company 25 per cent more for that service than the express company is doing at this moment.

Senator FOSTER. What proportion of strawberries are shipped by express and what by freight?

Mr. DAVIES. Sometimes the fact of the matter is this: That so far as Chicago is concerned, Chicago has probably 72 per cent of the business by freight, but the express companies come in there in competition with the commission merchants and they get down there and they solicit these goods and they sell these goods on commission just the same as a commission merchant does. The express company is a competitor against the banks of the country. They issue money orders. Every man in the business is an agent of the express company, and they issue money orders just the same as they do checks. The express companies are in competition against the Government in that they compete for the mail, and they issue money orders and they do not pay the tax. They charged the war tax up against the people.

Senator KEAN. Now, I want to get down to what your business is. See if I understand you. As I understand this, there are a large number of shippers who ship carloads of berries, we will say, consigned to 20 or 30 different people in Chicago, and you attend to that car and when it arrives you see that the people get their proper consignment of those berries, for which you get 2½ cents a hundred from the shipper?

Mr. DAVIES. From the shipper; yes, sir. I am employed by the shippers for that purpose.

Senator KEAN. Then you collect the money for the shippers?

Mr. DAVIES. Yes.

Senator KEAN. And take your 2½ cents a hundred out?

Mr. DAVIES. Yes.

Senator KEAN. And then you remit them the balance?

Mr. DAVIES. Yes; that is exactly the business.

Senator KEAN. Then the people in Chicago pay you?

Mr. DAVIES. No; they do not pay me. They pay the freight, if that is what you mean. I am paid by the people who employ me, the shippers in the country.

Senator KEAN. Well, but you said you paid the Illinois Central $35,000 last month.

Mr. DAVIES. Yes; and I collected those freight charges.

Senator KEAN. Then you must sell the berries for those people.

Mr. DAVIES. No.

Senator KEAN. You deliver them to them?

Mr. DAVIES. I deliver them to the commission merchants.

Senator KEAN. And then the commission merchants pay you for the freight?

Mr. DAVIES. Yes; for the freight.

Senator KEAN. For the freight and the berries?

Mr. DAVIES. No; they send that direct to the shippers. I collect commissions to cover the expenses entirely.

Senator KEAN. You collect commissions with the freight charge to pay your 2½ cents a hundred?

Mr. DAVIES. Yes.

Senator KEAN. I think I understand.

Senator FOSTER. Did I understand you to say that secret contracts and rebates are being practiced now?

Mr. DAVIES. Yes.

Senator FOSTER. Do you know of any?

Mr. DAVIES. I do not, of my own knowledge, know of any.

Senator KEAN. You get about $100 a car for distributing?

Mr. DAVIES. Is that what you make 20,000 pounds at 2½ cents a hundred?

Senator KEAN. You receive some 20 cars a day?

Mr. DAVIES. I don't know that that makes any difference. I get $5 a car for 20,000 pounds.

Senator KEAN. Did you say that you knew of any rebates for secret contracts practiced upon any road?

Mr. DAVIES. In regard to that, there is now proceeding in Chicago an investigation before the grand jury.

Senator KEAN. I am asking for your own knowledge.

Mr. DAVIES. No; I have no knowledge of it. I have never received a rebate, and I have never sought a rebate. I have never permitted a shipment to go through, to my knowledge, without paying the railroad company what it is justly entitled to, and I have asked the railroad companies to increase the charges as often as I have asked them to reduce them, and I can say with a good conscience that the railroad companies I have done business with have got every cent that is due to them.

Senator CLAPP. Is not the rate for freight fixed when the shipper ships his fruit? Suppose a man in Louisiana was shipping a carload to Chicago.

Mr. DAVIES. Yes.

Senator CLAPP. The rate is fixed down there, is it not?

Mr. DAVIES. On the railroads?

Senator CLAPP. Yes.

Mr. DAVIES. Certainly.

Senator FOSTER. If the rates are reasonable, and I understand you to state you have no complaints against the reasonableness of the rates, and you know of no rebates, what, then, is your complaint?

Mr. DAVIES. My complaint is that they are now resorting to other expedients than the old fashioned way of getting around the law.

Senator FOSTER. What are those?

Mr. DAVIES. There is, for instance, the industrial railroad. In Chicago there is the Iroquois Coal Company. That coal company has its rate. They transport coke from Pennsylvania or West Virginia to that point. I think the distance is over 600 miles. The freight rate on that kind of coke is $2.60 per ton, and they deliver that to the switch in Chicago on what they call the "Chicago Short Line," and it is a very short line, because it is nothing more than a switch into the Iroquois Iron Company, and they pay that Iroquois Iron Company no less than 40 cents a ton, whereas they deliver coke to other places in Chicago at some switches, and they charge them $2.65 a ton. There are instances that I know of, I think I know of, where demurrage is charged against the little fellows and it is absorbed for the big ones. In other words, that in the fixing of the rates, it is not the commodities that are being shipped on the American railroads to-day that determine what the service is worth; it is the chromo of the shipper. If you will organize a big trust and go to a railroad company and tell them that it is organized in that way, you can get 30 per cent reduction from the fact that you are organized.

Senator FOSTER. Please give us an example of that to your knowledge?

Mr. DAVIES. To my knowledge I paid more for the transportation of a carload of strawberries from Tennessee than the through rates on packing-house products from Kansas City to Liverpool, England. The rate to-day on bananas imported by way of New Orleans or Mobile gateway is 47 cents a hundred pounds, with an 18,000-pound minimum, as against the transportation of strawberries on the basis of 20,000 pounds minimum at 51 cents, and that rate involves 15 cents a hundred pounds for icing, and there is a messenger carried on the banana train that is not carried on the other.

Senator KEAN. Is not that a reasonable charge on the banana trade? Do you complain against the charge?

Mr. DAVIES. It is a reasonable charge. The minimum is what I have reference to.

Senator KEAN. If the banana charge is reasonable and the strawberry charge is reasonable, then what is the cause of complaint?

Mr. DAVIES. The rate of 47 cents on bananas to Chicago on a fast train on an eighteen-thousand minimum is either too low or the charge that we are paying on the strawberries from Louisiana points to Chicago is too high. Now, I have here a supplement to a tariff, and I will leave it with the committee and ask them to tell me what the minimum rate is on strawberries from any of these points. A Philadelphia lawyer could not do it. He could not tell what they are. I have handled business for ten days and there were no rates at all known to the officials. There is a supplement there and they could not find what they were. I happened to have it, and they charged 20,000 pounds minimum against their tariffs that called for 18,000 pounds minimum. There is more money collected from the people of this country under overcharges of that kind that they do not know about than this committee can ever imagine. Why, half the railway people doing business under this tariff don't know what they are; and my contention is that the Interstate Commerce Commission should have the power of fixing rates, and should also know what the rates are, which they have got on file, but which they don't know at the present time.

Senator FOSTER. Do I understand you to say that the Interstate Commerce Commission does not know the charges the railroads are making when they file their tariff with them?

Mr. DAVIES. I do not believe that the Interstate Commerce Commission ever sees one of those tariffs. I believe they are buried there.

Senator FOSTER. Well, now, that is a pretty serious charge. Don't you know that?

Mr. DAVIES. I don't know whether it is a serious charge or not. Those are the facts, from actual experience with them. I have written to the Interstate Commerce Commission and asked them for certain things which they should have on file and they never could find them. They did not have them. I refer now to the official classification for several years.

These experts of the railroads say in regard to the icing of cars that the rates set down on these tariffs distinctly stated that all shipments carried on the third class that the icing charges should be borne by the carriers. For years that was in effect. The rates

made, therefore, under this classification gave the icing, and the railroad companies up to 1902 carried the business in that way, but on a shipment from Fenville to Chicago, where the third-class rate is 21½ cents, the railroads made this kind of a tariff, that on ventilated cars the rate should be 20 cents and on refrigerator cars, which was 1½ cents greater than the third-class rate, and the Armour Car Lines exacted on all those shipments a further charge of $25 for icing after the icing had been charged for in the rate, and this is some of the expert rate making that they talk about.

Senator KEAN. Have you finished your statement?

Mr. DAVIES. I have one other statement. You wanted to know if there are any rebates being paid to-day. I would say that there are.

Senator KEAN. Please state them.

Mr. DAVIES. It is a device contrary to the act to regulate commerce that is being practiced on account of lack of knowledge as to what is being done. Take, for instance, a competitive point. Suppose that a car moves from a competitive point. When that car arrives it is not weighed; it is never checked. This that I have here shows that a carload is billed from a point at 1,600 pounds, when in effect the car weighs 16,000 or 18,000.

Senator KEAN. Did you ever receive a car that exceeded in weight?

Mr. DAVIES. Yes.

Senator KEAN. And you took advantage of it?

Mr. DAVIES. And I have had the railroad company increase the charges upon it.

Senator KEAN. You did not receive the rebate?

Mr. DAVIES. No; I never received a rebate, and never will. I want to call the attention of this committee to this fact: That a railroad company may publish rates, but there are ways of getting around those rates. For instance, a car is misrepresented—that is, the contents of it is—and I have asked the Interstate Commerce Commission to say that a railroad company should know what it is doing. A railroad man a little while ago told me that these goods were not billed right. Now, he therefore put the shipper in this position: That if the shipper is going to determine what he is going to pay, he is going to deliver the car accordingly, and the railroads in many cases in this country don't know what goes into a car and don't know what comes out. I know of a point where 150 cases of strawberries was systematically loaded on a car upon which there was never any freight paid, and the rate was 21½ cents a crate.

Senator KEAN. How long ago was that?

Mr. DAVIES. A year or two ago. It is done to-day.

Senator KEAN. Do you have knowledge of it?

Mr. DAVIES. Yes; and so can you, if you go around the freight yards.

Senator KEAN. Is this knowledge of yours a guilty knowledge?

Mr. DAVIES. I just a moment ago told you not, and further, I will offer to this committee the records of my business.

Senator KEAN. But you say you know these things are being done and have made no complaint.

Mr. DAVIES. Haven't I? I would like to show you these papers that have been nursed by the Interstate Commerce Commission for a year.

Senator KEAN. They have had them and the district attorney has had them?

Mr. DAVIES. And he is having them again as soon as I get back to Chicago, and he is going to act upon them. Now, I want to say just one more thing about this, and say that you can give to the Interstate Commerce Commission the powers to fix rates, but unless you give to that Commission the power to inspect the books of the railway company they will laugh at you. They are laughing through the gauze of American justice this moment. Why, the operation of fast freight lines, for instance, the operation of private car lines through the country, the operation of rebates, and of percentage of the miles and the manipulation of express companies; and to illustrate that, a friend of mine, a solicitor in the freight business, went to a house in Chicago that had 4 carloads ready to ship to New York. The rate was $2.25 a hundred. The railroads were religious. They would not shade the rates, and it was a good line and expected to get the business on the merits of the service. Two days afterwards he went up there and the express company had hauled down the cars and they were shipped to New York and delivered to the store at the other end, including the cartage, which they own, for $1.50, and the railroad companies, I presume, got 45 per cent of the $1.50, and were satisfied.

I am only saying these things because I think that the committee should know them. I think that the committee should know that the great question of transportation is a game of "hide and seek." The great corporations of this country are putting their traffic on the auction block and they are making traffic officials of the companies bid for it, and I want to say right here to you that no one will be better satisfied with the conditions in this country than the railroad officials who have to get business. The railroads at the present time do not think it a question of business. It is a question largely of gambling, and a manipulation of control and water and all those things, and the man whom I know that has served twenty-five years in the position of general freight agent, after his road was absorbed by another system, had the satisfaction of having a little paper put before him one day to say that his services were no longer required, and the only satisfaction was that to the victors belong the spoils.

Gentlemen, I think that is my statement, and I thank you.

STATEMENT OF MR. H. B. MARTIN.

Senator KEAN. You may state your name, place of residence, and occupation.

Mr. MARTIN. H. B. Martin; I am the national secretary of the American Antitrust League, residence New York City.

Senator KEAN. What is your occupation?

Mr. MARTIN. I am a traveling man by profession. My interest in this question is that of a consumer.

Senator KEAN. That is you are a commercial traveler?

Mr. MARTIN. Yes.

Senator KEAN. On what line of business?

Mr. MARTIN. My business is the tool business, but my business in connection with this rate question is principally that I am a consumer. and as it has been generally conceded by both the shippers and the railroads that the consumer pays the freight in the long run, or as Governor Larrabee and Brooks Adams have well called it, "the transportation tax," of $1,900,000,000 per year now collected by the railroad corporations, I feel that the consumers have some right to be heard on the subject.

We are somewhat concerned over a number of expressions made here by both railroad men and shippers to the effect that the most important thing is that rates shall be equal and that there is not much disposition on the part of either of them to disagree over the amount of the rate. In the light of these expressions it might well happen that they should sometime get together and agree on rates that because of their equality to the shipper and their profitableness to the railroads would result in an enormous and extortionate tax on the consumer.

It is true that we want to see peace in the railroad affairs in this country, but that would be a sort of an "order reigning in Warsaw" that would be highly unpalatable and unprofitable to the millions of consumers who pay the freight.

Especially is such a danger real when the shippers in different industries are combined in monopolistic trusts owned by the same men who own and operate the railways, as in the case of the steel trust, the coal trust, the Standard oil trust, the beef trust, and similar unlawful combines.

It was proven in the testimony before the Industrial Commission and shown in the final report of Commissioner Phillips (Vol. XIX, pp. 652–660) that the coal-trust roads made the freight rate enormously high because the rate they paid as coal shippers went into their own pockets as railroad owners. The same facts were again brought out in the suit begun by Congressman Hearst, of New York, in the courts and before the Interstate Commerce Commission.

The control of the highways is one of the most important functions of government. It is one of the half dozen great essential attributes of sovereignty in every nation, no one of which can be abdicated without the gravest danger to the safety of the State and to the welfare of the people.

The power to control the highways is of the same high rank and importance with the power to administer justice, to coin money, to make war and peace, to enact laws, and to levy taxes. The full and untrammeled exercise of each and all of these powers is vitally necessary to the very existence of every civilized government.

The control of the rail highways of the United States has passed almost completely into the hands of small groups of wealthy and powerful private individuals.

These men exercise their control of the highways through the machinery of corporations, traffic associations, and combinations and communities of interests of various sorts, some of which are lawful bodies and others are criminal conspiracies, so defined and denounced by both the laws of Congress and the decisions of the courts.

In whichever of these forms the control of the highways is exercised by private citizens it is a clear invasion of a most important function

of government, a usurpation of one of the greatest attributes of sovereignty by private persons for purely selfish ends. In pursuit of their ambition to amass wealth and power through this usurped authority of government, these combinations of individuals have so misused this enormous power of the highways, that they have aroused deep and widespread resentment among the great body of citizens. These citizens who have long suffered injustice and oppression in various forms have laid before the committees of both the House and Senate and the Interstate Commerce Commission a great mass of facts and proofs of the injuries they have been and are subjected to from this system of private control of the public highway, and they are appealing vigorously to Congress for relief.

They have furnished so much evidence of this character that further statements of facts in this line to your committee would seem superfluous. I have observed that the questions most frequently asked now by members of this committee are not for further evidence of grievances, but for suggestions for remedies against the evils universally admitted to exist in and from this system of unrestricted private control of those public highways known as "railroads."

There existed for a number of years an organization of all the railroads between Chicago and the Atlantic seaboard, known as the "Joint Traffic Association." Largely through the efforts of Senator William E. Chandler, at that time a prominent member of this Senate Committee on Interstate Commerce, that association was brought into court, and after trial the United States Supreme Court decided that it was a criminal conspiracy and combination in violation of the United States antitrust law and issued a decree ordering it to disband.

I have since been informed by railroad men that the association merely changed the name on the doors of its New York office and on its letter heads and kept right on doing business at the old stand in open contempt of the orders of the Supreme Court and the law of the land. I am informed that under its new name the association is that same Official Classification Committee which Commissioner Clements stated here had on ten days' notice, raised the rates simultaneously and unreasonably on over 600 commodities handled by 65 great railroads. Such a situation is a menace to the consumer and shipper, and is well worthy the attention not only of this committee and of Congress, but of the Supreme Court, the President, and Attorney-General.

It is true that certain of the railway officials and attorneys have appeared before the committees of Congress and attempted to convince you that there were no abuses and no grievances worth considering, and that the opposition to a continuance of the present system was only a manufactured sentiment. These railroad advocates have, unfortunately for their case, attempted to produce arguments, facts, and figures in support of their claim that everything was all right and that the public had nothing to complain of.

One of the latest and most elaborate of these arguments for the private railroad combines was that by Mr. Kruttschnitt, of the Union Pacific and Southern Pacific railways, to the effect that railroad expenses in recent years were increasing faster than railroad earnings, and that the net profits of the railway companies were actually several millions dollars less in 1904 than in 1903.

These statements were made in an attempt to disprove to your committee the report of the Interstate Commerce Commission that the railroad companies had increased their earnings by raising rates to $155,000,000 more in 1903 than in 1899.

Mr. Kruttschnitt states that the reason the net earnings were less in 1904 than in 1903, and the reason that the $155,000,000 increased tax on the consumers was necessary was because of the increased cost of materials and labor.

He claimed the increased cost of labor was some 18 or 20 per cent. Although there is grave doubt of the correctness of this, still, let us concede that, as a legitimate increase of the expenses of the railways, and proceed to the other items.

Rails, he said, cost 25 per cent more. Now, the rails were bought from the steel trust. Who owns the steel trust? The same men who own the railroads, so that these community of interest gentlemen as owners of the railroads paid to themselves as owners of the steel trust 25 per cent more for steel rails, amounting to millions of dollars annually. Was that a legitimate excuse for raising the rates on the consumer? I think not. He says the cost of lumber was increased 30 per cent. This lumber was bought largely from the lumber trust. Who owns the lumber trust? Principally the same men who own the railroad combines. The cost of coal was increased 70 per cent. This coal was bought mainly from the coal trust. Who owns the coal trust? The same men who own the railroads. The same is true of the steel bridge trust, the locomotive trust, and other monopolistic manufacturers of material used by railroads, down to the purchase of lubricating oil from gentlemen more or less closely related to the Standard Oil trust.

Is this great increase in the prices, amounting to millions of dollars, paid by the railroad owners to themselves as owners of the manufacturing and mining trusts, a legitimate excuse for saying that the $155,000,000 increase of rate in 1903 was not mainly a profit to the men who were joint owners of both the railroads and the trusts?

Then consider the millions of dollars taken from the earnings of railroads and applied to the purchase of newer, better, and more numerous cars, locomotives, and bridges, and permanent improvements, and charged to operating expenses. Are they not evidences of profit to the owners of the railroads? These things are additions to the plant, to the captial of the railroads, which greatly increase their earning power for the future?

Is it right or reasonable or just to permit the railroads to increase their rates, to levy greater taxes on an already overburdened people in order to increase their fixed capital?

When they increase their plants let them invest their own money to do it, not levy an extortionate and unlawful tax on the consumer to provide themselves with machinery with which to earn more profit. There are many other ways by which the net profits of the railroads are absorbed in order to make it appear that an increase of the railroad rates is justifiable.

For instance, there is a rebate amounting to millions of dollars that is generally understood to be collected by the railroad officials from the men who sell appliances of all kinds to the railroads through these officials. This helps to make net earnings look small on the face of the returns.

Then consider that 2,000,000 persons ride on passes and consider how many millions of dollars annually would be added to the legitimate earnings of the railways if all these people paid cash fares, as they are all well able to do.

Consider also the remarkably large "legal" expenses which are generally understood to relate not so much to litigation over laws already on the statute books as to the placing of obstacles in the way of the enactment of new legislation. This also has to be subtracted from the net profits and I presume it also goes into the "operating expenses" account.

Last but not least we have to consider the amounts subtracted from the revenues of the roads to be used as contributions to various political campaign funds for the purpose of saving the national honor, etc. Of course this item would have to be charged to "operating expenses," and would go quite a long way toward showing that the net earnings of the roads were not nearly so great as we might expect them to be, judged by the high rates and the enormous tonnage.

It was recently reported in the public press that at a trial in New York evidence was submitted showing that the Wabash Railway bought the Western Maryland Railway for $8,500,000 and capitalized it for $60,000,000 of bonds and $60,000,000 of stock. The need for interest and dividends on such bonds and stocks is made an excuse for levying higher rates, just as in the case of the Louisville and Nashville-Seaboard Air Line $50,000,000 issue of new bonds and stocks, not representing a single dollar's worth of railroad property, which was described by Commissioner Clements in his testimony here.

The aggregate of bonds and stocks of this character, representing nothing but "water" or fictitious capital issued by all the various railroads of the United States, unquestionably amounts to billions of dollars, and the companies are trying to keep their rates high enough to extract from the people the money with which to pay dividends and interest amounting to hundreds of millions of dollars on capital they never invested.

I think anyone acquainted with railroad financiering, even in a rudimentary degree, is aware that fully one-half of the fifteen billions of stocks and bonds issued by the railroad companies and on which they want to earn dividends and interest by taxing the shipper and consumer, really represents nothing but the estimated value of the franchises or permission by which Congress and the State legislatures have allowed them to fix rates practically without restraint. They have seized upon the great government function of controlling the highways and they are selling it in the market place for $7,000,000,000 or $8,000,000,000. They have a simple and confiding faith that Congress is going to permit them to continue their careers as controllers of the highways for another five hundred or a thousand years. Some of their bonds and stock issues are based on leases which run for four hundred and ninety-nine and nine hundred and ninety-nine years, so sure are they that the citizens can never shake loose their hold on the public highways and the consumers' pockets.

The remedy for these present intolerable conditions growing out of the usurpation of a great government function by private parties surely must lie in the resumption by the Government of its proper

sovereign authority over the highways. The great transportation tax of nineteen hundred millions of dollars per year must be levied fairly and openly and equally upon all shippers and passengers by authority of law and under the rules of justice. It must not be levied secretly, unequally, discriminatively, unreasonably high on the ordinary shipper and unreasonably low for the great trust and monopolies, as the caprice or interest of some railroad manager may decide.

The first steps in this direction for a remedy are well indicated in the able statement to your committee made by President Stickney, of the Great Western Railway, and Commissioners Prouty and Clements. First, empower the Interstate Commerce Commission to exercise promptly and effectively the legislative function of making new rates where existing ones are proven unjust or unreasonable. Secondly, create a new Department of Highways, with a Cabinet officer as Secretary of Highways at its head, to supervise and to police the railway corporations and their managers, so as to arrest them when found doing wrong and see that they are promptly prosecuted for offenses against the law of the land.

It is said here by the representatives of the railways that the managers of the roads will take good care of the shippers along their lines so as to make more business for their roads. Well, a sheep raiser takes good care of his sheep in order to get more wool and mutton. But these railroad gentlemen must remember that the American people are not sheep, even though they have lately submitted to a good deal of shearing, and they will prove to be very tough mutton if the railroad corporations attempt to eat them up by extortionate and unjust levies of the transportation tax.

I will read, as a part of my remarks, the following, taken from the Railroad Exchange, one of the leading railroad papers of the country:

Press dispatches from Pittsburg say that 10,000 freight cars recently ordered by the Baltimore and Ohio will cost the large sum of $12,600,000. This is an average price per car of $1,260, or $300 more than was quoted less than a year ago.

It is not hard to estimate the saving which the Baltimore and Ohio would have made by purchasing the above mentioned 10,000 cars in small lots, spread over an average of, say, three years. A fair average price for a steel car is about $1,050, which is $210 less than the present market quotation.

Just one word further as to the alleged increased cost of labor. It should be borne in mind that during the last half dozen years when increase in the cost of railroad labor is claimed, there has also been a great increase in the average size and hauling capacity of locomotives and cars, so that to-day a train crew hauls a far greater number of tons of freight per day, and thereby the labor cost per ton of hauling freight has been very materially reduced; more than counterbalancing any small increase in wages.

There are a few hundred thousand railroad owners and a few hundred thousand shippers, but there are 80,000,000 consumers who pay the freight finally. I trust that this committee will give to the rights and interests of the consumers that careful and thorough consideration to which the enormous magnitude and preponderance of their numbers and interests justly entitle them.

I will submit the draft of a bill to provide for a department of highways.

STATEMENT OF MR. JOHN C. WELCH.

Hon. S. B. ELKINS,
Chairman Interstate Commerce Committee,
United States Senate, Washington, D. C.

DEAR SIR: I desire to submit to your committee the following suggestions, which are in line with two papers I submitted to the Interstate Commerce Commission last year in its consideration of differential rates. On rate making and related subjects I have made a number of addresses, the first in August, 1902; have had several communications in New York and Brooklyn newspapers, and addressed by open letter the New York Board of Trade and Transportation under date of August 30, 1904.

The general grounds which I have taken and now hold is that, regarding interstate-commerce freight and passenger charges, classifications of freight, routing, agreements for pooling, and, in general, what pertains to payments to transportation companies for services rendered, should have their initial action with the men administering the affairs of the transportation companies, but that this department of the public service of these companies should come before a board or boards of commissioners clothed with power by the Federal Government for approval and indorsement before any changes in the existing order shall be operative.

The plan contemplates that all conditions existing at the time of its adoption would remain until modified by the joint action of the railroad and Government representatives; that any existing regulation would have the force of a Federal law, and that all who participated in an unauthorized variation by that fact would be guilty of a civil or criminal offense, and subject to punishment by fines, imprisonment, etc. A very effective way to punish a representative of a transportation company who participated in such infringement of the law would be to debar him from having any voice in the future specified regulations which in making and maintaining would have come in part under the control and jurisdiction of the Federal Government.

With the deprivation of any particular company of the power on its own account to make a new rate there will be no occasion on the part of other companies to take sudden action to meet new existing rates. And in this would lie the reduction of the making of new rates to very moderate numbers.

The requirements might be for numerous Federal boards to act in conjunction with the boards or representatives of the transportation companies, covering, perhaps, different sections of the country. As new conditions in transportation might arise on account of changes in the season, the creation of new industries, including the finding of new sources of supply of commodities, and in sudden exigencies the action of the Government representatives might be practically contemporaneous with those of the transportation companies, and there need be no occasion for a lack of elasticity, on which there has been founded an argument against any Government participation in rate making, etc. The proposed plan would be favorable to sudden exigencies in the making of rates for the reason that it could be done without a general destruction of rates, as the change could be kept in

time of continuance and in extent of its range within prescribed bounds.

By the adoption of such a plan it will become at once the duty of the Federal Government in the general interests of its citizens to exercise due diligence in carrying out the regulations it had participated in establishing, and there would be no occasion for the exercise of intermediate action except such as falls to the officers of courts and to grand juries, and complaints before such would be in order by anyone who felt aggrieved and who had facts to present.

What has been here said has only contemplated the action of Federal commissioners in approving or disapproving propositions made by representatives of transportation companies. In case a reduction in rate was called for and the transportation representatives declined to act on the request, the Federal courts, as now constituted, could be appealed to, and while it would be, no doubt, beyond their jurisdiction to say what rate should be made it would be within their jurisdiction to fix a rate at a nonconfiscatory maximum point.

The late Thomas M. Cooley, in an address as chairman of the third annual convention of railroad commissioners, Federal and State, held at Washington March, 1891, in disscussing problems of transportation then and still confronting the country, said:

> The troubles that are always present, always annoying, and always difficult of adjustment, are those which relate to the making of rate sheets, and to the manner in which these are observed or treated after they are made. It is here that we discover a problem that is not narrow or temporary, and that does not touch lightly upon the relations between the railroads themselves, but is seen in nearly all their controversies and misunderstandings, and that is the prolific parent of nearly all the difficulties between the railroads and those who have occasion for their services. It is the unjust nature of the rate sheets when the rights of the public or of other roads are considered; it is the refusal to join with other roads in making them, or the demand of an unreasonable share of a joint rate when one is made; it is the sudden reduction in rates when injury can be done to a rival by resorting to that measure, or when it is hoped that the rival can be compelled thereby to give assent to some measure to which assent can not be obtained by negotiation; it is the refusal to unite in through bills of lading at agreed rates, or to receive for the transportation of persons the tickets that have been given by other roads; it is the failure to abide by understandings concerning rates when a disregard of them seems to promise a temporary advantage; in short, it is the manner in which this whole subject of making rates is dealt with and treated by the railroad companies, and the effect thereby upon their own interests, respectively, the interests of stock and bond holders, and the interests of those who, willingly or unwillingly, are their customers, that present the fundamental and still unsolved problem which must necessarily address itself, first of all to the railroad managers of the country, and after that to the public authorities. The evils in railroad service nearly all find their origin here; and especially is this true of those that are most difficult and inveterate. The railroad problem will be dealt with effectually when the power to fix the rates for railroad transportation is placed upon such a basis that the evils now so prominent and troublesome and persistent, which spring from its exercise, shall be cured and the power itself brought under effectual regulation.

It can be seen from this extract that in the opinion of this most eminent authority that the country has yet produced in regard to interstate transportation, that the problem does not lie in railroad discriminations and rebates—where it has been generally placed. Judge Cooley says regarding them: "The problem without question is here, but not in its entirety."

The attitude of those opposed to Government action in regard to

rate making, on the plea that discrimination and rebates are out of the way by the legislation of 1903, is that there is nothing further for the Government to do except to execute the laws now upon the statute books, and as they are to be modified, perhaps, in minor degree.

The great popular claim, resting upon tremendous injury and evils that have grown up, is for still further action on the part of the Government, and for this attitude there is support by the eminent authority from whom quotation is here made.

With great respect, very sincerely, yours,

JOHN C. WELCH.

BROOKLYN, N. Y., *May 18, 1905.*

[Ralston & Siddons, attorneys and counsellors at law.]

WASHINGTON, D. C., *November 16, 1904.*

DEAR SIR: Some months ago you received a letter signed by Mr. T. T. Le Berthon, manager of Freight Publishing Company, 116 Nassau street, New York City, which read as follows:

We are marshaling an army of shippers which now promises to be bigger than any ever before formed to appeal to Congress. A copy of Freight is sent to you by this mail. It explains fully our purpose—the passage of a bill to make operative, as originally intended, the act to regulate commerce. We advocate simply this: Just and equitable freight rates and governmental supervision over railroads similar to that now exercised over the national banks. We indorse a measure along the lines laid down in the Quarles-Cooper bill, and already have received wide support from shippers in all parts of the country, as well as from Congress members and public bodies. We send to you also a copy of the petition we are circulating, showing facsimiles of a few men who are indorsing the measure.

Will you cooperate with us in this excellent work? We ask this because it is important that shippers get the support of every influential man. Kindly write us by return mail.

Accompanying the foregoing, a copy of which was sent to every member of the United States Senate and House of Representatives, was a petition asking your support in behalf of the so-called Quarles-Cooper bill for the enlargement of the powers of the Interstate Commerce Commission.

It will probably interest you to learn that every signer of the petition which accompanied the said letter has withdrawn his indorsement of the proposed legislation. I inclose two documents showing this to be the fact.

Of course, you understand that the rate-making power which the Quarles-Cooper bill would confer upon the Interstate Commerce Commission is a legislative power. I have regarded it as contrary to American principles for the lawmaking body to delegate such an important part of its functions to an appointive body, thus removing a portion of the legislative authority one degree further from the people. Believing that the idea that legislative authority should be retained in the hands of the representatives of the people really dominates among the thinking people of the country, it has interested me to ascertain whether there is any genuine public sentiment in favor of departing from this principle in the matter of railway legislation.

Investigation of this one petition, which has been so widely circulated, confirms my belief that there is no public demand that railway rates should be fixed by executive order.

Very respectfully, yours,

H. T. NEWCOMB.

Hon. STEPHEN B. ELKINS,
Elkins, W. Va.

THE HARTFORD CARPET CORPORATION,
New York, July 7, 1904.

EDITOR OF FREIGHT,
116 Nassau Street, City.

DEAR SIR: Some time ago we signed a petition to Congress supporting the Quarles-Cooper bill.

We have given this matter careful consideration and we desire to withdraw our support of the Quarles-Cooper bills introduced into Congress of the United States, known as H. R. No. 6273 and Senate bill No. 2439.

We understand that the original of the petition to Congress is in your possession, and we would respectfully request that you remove our signature from the same.

Awaiting the favor of a reply, we are,

Yours, truly,

R. P. PERKINS,
President.

THE EATON, COLE & BURNHAM COMPANY,
Bridgeport, Conn., July 16, 1904.

JAMES MCCARTNEY, Esq.,
President Freight Publishing Company,
116 Nassau Street, New York.

DEAR SIR: Begging to refer to our letter addressed to you under date of June 8, 1904, and thanking you for the courteous call of your representative, we address you now to say that in view of considerations of business character, and without bias as to questions which may or may not be involved, we wish to withdraw our signature from the petition to Congress relating to interstate-commerce legislation.

Respectfully, yours,

E. H. COLE, *Treasurer.*

NEW YORK, *June 23, 1904.*

EDITOR FREIGHT,
116 Nassau street, City.

DEAR SIR: After due consideration, we desire to withdraw our support of the Quarles-Cooper bills introduced into the Congress of the United States, known as H. R. bill No. 6273 and Senate bill No. 2439, and would respectfully request you to remove our signature

from the petition to Congress, the original of which we understand is now in your possession. Awaiting the favor of a reply,

We are, yours, truly,

THE YALE & TOWNE MFG. COMPANY.
By HENRY B. TOWNE, President.
F. VIETOR & ACHELIS.
MINOT, HOOPER & COMPANY.
C. L. BAUSHER & COMPANY.
E. G. BURGESS.
F. V. DARE & BRO.
DAVID BINGHAM.
MILMINE, BODMAN & CO.
RICE, QUINBY & CO.
R. W. FORBES & SON.
W. H. CROSSMAN, OF W. H. CROSSMAN & CO., INC.
A. D. JUILLIARD & CO.
CLARENCE WHITMAN & CO.
LAWRENCE & COMPANY.
DEERING, MILLIKEN & CO.
JOHN C. EAMES.
TEFFT WELLER CO.
G. C. CLARK, *President.*
H. L. JUDD CO.
JOHN DAY, *President.*
GEO. BORGFELDT & CO.
GARNER & COMPANY.
WOODWARD & STILLMAN.

A SUGGESTIVE PLAN FOR LEGISLATION TO PREVENT REBATES AND DISCRIMINATIONS IN INTERSTATE COMMERCE BY THE NEW YORK BOARD OF TRADE AND TRANSPORTATION.

NEW YORK, *May 5, 1905.*

Senator STEPHEN B. ELKINS,
Chairman Interstate Commerce Committee,
United States Senate, Washington, D. C.

DEAR SIR: I have the honor to hand you herewith, by the direction of this board, a copy of "A suggestive plan for legislation to prevent rebates and discriminations in interstate commerce," which is submitted for your consideration.

Very truly, yours,

FRANK S. GARDNER, *Secretary.*

A SUGGESTIVE PLAN FOR LEGISLATION TO PREVENT REBATES AND DISCRIMINATIONS IN INTERSTATE COMMERCE.

[New York Board of Trade and Transportation: President, William McCarroll; Vice Presidents, John H. Washburn, James Talcott, John M. Peters; Treasurer, Frank O. Herring; Secretary, Frank S. Gardner.]

JUDGE COOLEY'S VIEWS OF WHAT CONSTITUTES A REASONABLE RATE—HOW ALBERT FINK DEALT WITH SECRET REBATES—REPORT APPROVED BY THE NEW YORK BOARD OF TRADE AND TRANSPORTATION, MARCH 22, 1905.

NEW YORK, *March 22, 1905.*

THE NEW YORK BOARD OF TRADE AND TRANSPORTATION:

Your committee on railway transportation submits herewith, for your consideration, a plan for interstate commerce legislation devised by the secretary of this board, which after careful consideration we have approved. The Fifty-eighth Congress adjourned without enacting legislation to meet the recommendations of the President in

relation to interstate commerce, and the United States Senate appointed a committee to investigate this subject with a view to preparing and recommending some legislation to the next Congress. We believe that the idea upon which the accompanying bill is based has much merit, and we recommend that copies thereof be submitted to the United States Senate committee and to persons and organizations interested in this question.

Respectfully submitted.

CHARLES A. MOORE, *Chairman.*
J. FREDK. ACKERMAN,
W. S. ARMSTRONG,
DICK S. RAMSAY,
THOMAS P. COOK,
J. L. HOPKINS,
Committee on Railway Transportation,
New York Board of Trade and Transportation.

NEW YORK, *March 4, 1905.*

The Committee on Railway Transportation of the New York Board of Trade and Transportation, New York City.

GENTLEMEN: It is useless to argue whether the rate-making power was intended to be conferred on the Interstate Commerce Commission by the Congress or the people of nearly twenty years ago if the people determine that such power shall be given now, and it behooves us to consider if the demand can be conceded with safety.

The measure required by existing conditions is one that will insure equality of rates and privileges to all shippers and give ample and speedy remedy when infractions of the law have been found to exist, and it must be free from constitutional objection.

The Esch-Townsend bill does not appear to answer to these essential requirements. It fails to remedy the private car line evils; it is cumbersome and expensive in the machinery provided; the court of transportation could probably give no decision more effective than the present Commission under existing law; the constitutionality of the powers conferred upon the court is a mooted question, and the delays incident to an inquiry by the Commission, supplemented by review by the court, are not remedied.

It may be impracticable to devise any new plan of legislation that will meet these requirements and eliminate the feature of Commission rate making.

Having in mind the difficulties presented, I submit herewith, in the form of a short bill, for your consideration, a suggestive plan of legislation, which is aimed at the most serious evils in interstate commerce. The bill is not offered as a complete measure, but it presents the thought and its application, and I entertain the hope that it will offer to both the railroads and the shippers some attractive features.

Among the things this bill would do are the following:

1. It will eliminate the question of rate making by the Commission and accomplish the making of new reasonable rates through the offending railroads themselves,

2. It will eliminate the mooted constitutional question of the right of Congress to invest the Commission or the courts with the rate-making power.

3. It will eliminate the necessity for any inquiry by the Commission to determine what a reasonable rate is in substitution for a rate complained against, such inquiry being very intricate and requiring much time. It will, therefore, in this respect, expedite a determination of complaints and materially shorten the time consumed between filing of complaint and decision.

4. It allows review of determination of rates in substitution upon questions of law only. As these provisions in this respect are very simple and direct the practice under it would be equally so, and allow but little room for a valid demand for review, thus eliminating delay from this cause in the large majority of cases.

5. A rebate given to one shipper would reduce the rate to the same extent to all shippers.

If simplicity, directness, and economy are meritorious features in legislation, I believe this plan will commend itself to your approval. Following my plan, which is attached hereto, I submit some comments, which are intended to make its theory and purposes more clear.

Very respectfully,

FRANK S. GARDNER,
Secretary New York Board of Trade and Transportation.

A BILL to supplement the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the acts amendatory thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever, upon complaint duly made under section thirteen of the act to regulate commerce, the Interstate Commerce Commission shall, after full hearing, ascertain that an unlawful rebate has been given, or a discriminating rate lower than the published tariff has been made or charged by any common carrier for the transportation of persons or property, or that a rate lower than the regular rate has been made or charged by rebate or by any other pretext or device whatsoever for the use of any private freight car or refrigerator car or other special form of car engaged in interstate transportation, or for any service incident to or connected with the care or preservation of property transported in any such private or special car, the act of the common carrier or of any of his or its officers or agents, or the act of the owner or owners of any such private car or of any of his or their officers or agents in giving such rebate or rate lower than the regular rate, whether made or given directly or indirectly, shall be construed and held to be the making of a new and reasonable rate, and the Commission shall determine and declare the net rate so produced by such unlawful rebate or the discriminating rate, as the case may be, and such new rate so made by the carrier or car owner, and so determined and declared by the Commission, shall be published and shall take effect and become operative immediately and shall be substituted for the tariff rate or the regular rate complained against as having been rebated or cut, and it shall be the maximum rate charged in place thereof for one year and until changed in the manner provided by law; and the Commission shall give immediate notice of its finding, determination, and declaration to the person or persons, corporation, common carrier, or owners affected thereby; but at any time within sixty days from date of such notice any person or persons, corporation, common carrier, or owner directly affected by such determination and declaration of the Commission, and deeming it to be contrary to law, may institute proceedings in the United States court having proper jurisdiction to have it reviewed and its lawfulness inquired into and determined.

but no proceedings by any court taking jurisdiction shall consider any testimony except such as is contained in the record.

SEC. 2. That when the rate substituted as provided in section one of this act shall be a joint rate, and the carriers, parties thereto, fail to agree upon the apportionment thereof among themselves within twenty days after notice of the determination and declaration of the Commission, the Commission may, after full hearing, issue a supplemental order declaring the portion of such joint rate to be received by each carrier party thereto, which shall take effect of its own force as part of the original finding: *Provided*, That the Commission in determining the portion of a joint rate to be received by each carrier party thereto shall fix the guilt upon the road or roads responsible for the rebate or discrimination, and shall apportion the shares of the joint rate accordingly. Such supplemental order shall be subject to review by the court having proper jurisdiction within the time and in the manner hereinbefore provided for the review of original findings of the Commission: *Provided*, That any rate, whether single or joint, which may be determined and declared by the Commission under the provisions of this act shall for all purposes be deemed the published rate of such carrier or owner, and, except as provided in section three of this act, shall be subject to the provisions of the act to regulate commerce and the acts amendatory thereof.

SEC. 3. That any rate determined and declared under the provisions of this act and substituted for the tariff rate shall be made compulsory and enforced only upon the person or persons, corporation, common carrier, or owner, upon whose line or cars the rebate or discriminating rate or rate lower than the regular rate complained of was made, given, or charged, but nothing in this act or in the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or in any act amendatory thereof, shall be construed or held to forbid the voluntary adoption of such new rate by any road, corporation, or common carrier competing in interstate transportation with the road, corporation, or common carrier complained against and directly affected by the determination and declaration of the Interstate Commerce Commission under the provisions of this act: *Provided, however*, That any such competing road, corporation, or common carrier, other than the one complained against, electing to adopt the new rate determined and declared under this act shall be permitted to immediately adopt and charge such new rate upon serving notice of intention so to do upon the Interstate Commerce Commission and publishing said notice specifying such substituted rate, but the voluntary adoption by any such competing road or company of such new rate shall not forbid the subsequent changing of such rate in the manner now provided by law for the changing of rates.

SEC. 4. That the owner or operator of any such private freight car engaged in interstate-commerce transportation is hereby declared to be a common carrier, and is subject to all the provisions, so far as applicable, of the acts to regulate commerce, and of this act.

SEC. 5. That any person, association, or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished in the manner provided by the act approved February 19, 1903, entitled "An act to further regulate interstate commerce."

SEC. 6. This act shall take effect from its passage.

COMMENTS ON PLAN.

Reasonableness of rate fixed.—When a rate is cut by rebate or otherwise it is presumable that the road can carry for the new rate and make a profit that is satisfactory to itself on that business, because railroads are in business to make money for their stockholders. Frequently, when a rate is cut, it is done for the purpose of securing a large volume of business which is intended to be moved within a comparatively short period of time. The road before making the cut calculates the profits; it also calculates the chances of being apprehended, prosecuted and fined under existing law, and, finding that the fine, if imposed and paid, would probably be less than the profits on the transaction, the risk is taken. For that road under those circumstances, the fine has no deterrent effect to prevent the rebate or cut rate being given. Therefore when a road has deliberately given a rebate to get business; has secured the business and voluntarily carried for the cut rate, and thereby proved that it was anxious to do business at that rate, even facing the penalty of the law by so doing, it must be assumed that the rate produced a profit satisfactory to that road and that the rate is not unrea-

nably low. If the cut rate is not unreasonably low the higher tariff rate is too high, or unreasonably high, and ought to be lowered. Then the proposition must be obvious that if the road gives the lower rate to one shipper it should not be permitted to charge the unreasonable rate to other shippers and certainly it should not be either permitted or obliged to go back to the higher unreasonable rate and charge all shippers more than is reasonable. This leads at once to the conclusion that dictates that the giving of the rebate rate or cut rate shall be construed to be the making of a new and reasonable rate which shall be substituted for the tariff rate.

Judge Cooley's views in harmony with the foregoing.—When the author of the foregoing bill drafted it he believed that he was the originator of the idea contained in the first section, but he finds that its application to prevent rebating was first made by Mr. Albert Fink, commissioner of the "joint executive committee," from 1875 to 1888, and that Judge Thomas M. Cooley, chairman of the Interstate Commerce Commission, enunciated very similar views in 1890. Judge Cooley was recognized by the railroad managers as an authority on railroad questions prior to that date, and was selected by them as a member of the famous arbitration commission on differentials between the several Atlantic seaboard cities.

The views of Judge Thomas M. Cooley in harmony with the foregoing were published in the Fourth Annual Report of the Interstate Commerce Commission, pages 30–31, as follows:

"*If these (tariff rates) are secretly cut, or if rebates are given to large shippers, the fact of itself shows the rates which are charged to the general public are unreasonable*, for they are necessarily made higher than they ought to be in order to provide for the cut or to pay the rebate. It is a very erroneous notion that the results of a cut or of a rebate fall only upon the carrier; they fall at last to a considerable extent upon the public, and those who pay full rates largely make up for every allowance that is made to those who do not; if the carrier habitually carries a great number of people free, its regular rates are made the higher to cover the cost; if heavy commissions are paid for obtaining business, the rates are made the higher that the net revenues may not suffer in consequence; if scalpers are directly or indirectly supported by the railroad companies, the general public refunds to the companies what the support costs, and in every one of these cases the fact of improper drafts upon the gross revenues, or of improper reductions of what ought to go to swell these revenues, *is proof that the rate sheets are too high.* IT WOULD BE PERFECTLY LEGITIMATE AND PROPER IN SUCH CASES TO ORDER SUCH REDUCTION AS WOULD BRING THE PUBLISHED RATES DOWN TO THE AVERAGE OF WHAT IS RECEIVED FOR RAILROAD SERVICE WHEN THE WHOLE BUSINESS, NOT MERELY THAT WHICH IS DONE AT FULL RATES, BUT THE AGGREGATE WHEN THAT WHICH IS DONE AT REDUCED RATES OR DONE FREE IS TAKEN INTO ACCOUNT. *No evidence can be more conclusive that the carrier is by his regular rate sheets charging something more than reasonable prices for his service* than the fact that either openly or secretly he violates the law to accept from favored classes, or from individuals, a less compensation, or that he pays large sums for procuring business at the rates named, or that he so manages his business that parties who have no legitimate connection with it are enabled to prey upon it, and thus indirectly prey upon his patrons.

"A reasonable rate is one that will make just and fair return to the carrier when it is charged to all who are to pay it without unjust discrimination against any, and when the revenue it produces is subject to no improper reductions. No carrier has any ground for just complaint if its published rates are reduced by the public authorities to the standard of the average it accepts, when by direct violation of law, or by devices that are intended to evade its provisions, the published rates are departed from. Its own conduct in such a case fixes the maximum of the claim it can with any propriety make upon the public."

The new rate shall go into effect immediately.—If the higher rate is unreasonable there is no justice or propriety in permitting the carrier to charge it to any shipper for thirty days, or at all. If any period of time is given before the new rate goes into effect, that would be to permit the discrimination to go on for the time fixed and allow the carrier to continue his unreasonable charge for that period, and one shipper would have the benefit of the lower rate while others were denied it. It would in effect legalize rebates and discriminations for thirty days after they were found out, while forbidding them before they were discovered, and would invite the making of rebates and discriminations which would go unchecked and unpunished for the period fixed. It would defeat the law by encouraging the acts it is intended to prevent.

The giving of the rebate is forbidden under the present law and is a misdemeanor punishable by a fine of from $1,000 to $20,000 for each offense. This provision would not be repealed by enacting this new plan into law. The giving of a rebate or a discriminating rate would still be an offense. No one would be considered sane who proposed that a bank cashier caught stealing should be allowed to continue his thefts for thirty days, or any other period, after he was found out before he was brought to account for his misdoings. There is no better reason for permitting a railroad to continue for even a short period an illegal rebate or a discrimination in favor of one shipper and to the injury of others. Therefore, the lower rate when determined and declared by the Commission should go into effect immediately.

It must be borne in mind that the conditions under which rates are fixed under the provisions of this plan are quite different as to most of them from those contemplated under the Esch-Townsend bill or the Quarles-Cooper bill. Under the latter bills the rate fixed is arrived at by the investigations of the Commission and determined by the exercise of their judgment, and those bills are not intended exclusively in all cases, or in any case, to apply only to unlawful rebates and discriminations, but to change any rate in the tariff complained of as too high, or for any reason. In the exercise of judgment different men would reach different conclusions upon the same facts, because human judgment is subject to error.

On the other hand under this plan there is no room for the exercise of judgment. The Commission has but to establish the fact by evidence that a rebate or discriminating rate has been given and whatever that rate may have been becomes the new rate.

Rates fixed may be in some instances lower than profitable.—Would not the fixing of a rate that is unprofitable for the term of one year be unjust and confiscatory, and hence unconstitutional? The imposition of a fine of $20,000 for each offense is confiscatory, but not unconstitutional; neither is it unjust if it is a necessary penalty to insure the observance of the lawful prohibition against rebates and discriminations when Congress in its wisdom has prescribed that penalty for infractions of the law. A rate fixed by the Interstate Commerce Commission, in substitution for a tariff rate lower than would be reasonably profitable to the carrier under the Esch-Townsend bill in correcting a tariff, would be confiscatory and unconstitutional. A rate fixed under this plan pursuant to the will of Congress to punish for the making of a rebate or discrimination, although in some instances lower than profitable, would not be in any sense more confiscatory or unconstitutional than a fine of $20,000 imposed as a penalty or as a deterrent measure, because it is provided for precisely that same purpose. The power of Congress to prescribe a penalty which it deems to be adequate and suitable for the offense can not be questioned.

Rates fixed on one road would affect competing roads.—A criticism of the Esch-Townsend bill, and similar measures which confer the rate-making power upon the Interstate Commerce Commission, was to the effect that a single rate fixed by the Commission would in many instances disarrange the freight tariffs of competing lines and even involve entire systems and many States by its influence, and that such power should not be conferred upon men not connected with the railroad interest. These considerations, as well as the equities involved, are thrown to the winds when a road has determined to cut a rate to gain new business, as has already been referred to. But if such cut rates when made were always to become permanent, and almost invariably followed by a corresponding reduction by competitors, so that the cut applied to a year's business would bring loss instead of gain to the cutter, such risks would seldom, if ever, be taken thereafter, and stability would be established.

How Albert Fink dealt with secret rebates.—When the railroads of the country, from 1875 to 1888, were trying to work out a system of self-government among themselves, the managers representing the associated lines were accustomed to meet in conventions to discuss questions of management and establish rates by mutual agreement. Mr. Albert Fink, who was generally acknowledged to be the ablest of all American railroad managers, was the chairman and commissioner of the "joint executive committee." In his addresses to the managers Mr Fink complained bitterly that the rates agreed upon in a convention were frequently cut before the convention had dispersed, and he demanded that measures be adopted to compel the observance of rates agreed upon or to punish the offending roads. It must be observed that the men composing the "joint executive committee" were, in respect to ability and wisdom as railroad managers, only second to Mr. Fink, their leader. After much careful deliberation

the associated railroad managers, following Mr. Fink's suggestion, decided to notify the offending roads that unless the rates were restored the lowest cut rates that had been made by the recalcitrant lines would be generally ordered and adopted by all the lines in the association as the tariff rates. This warning failing of the desired result, the cut rates were thereupon made the tariff rates upon all the lines. This was the railroad method of dealing with the question of rebates, and was adopted with a view to ultimately bettering their own interests and as a measure to maintain rates and enforce agreements. Mr. Fink conceived and applied the idea as a punitive measure to effect ultimate stability of rates, the competing roads uniting to force the cut rate on all roads alike for an indefinite period, and voluntarily subjecting themselves to adopt the lowest cut rate to punish the rebaters and to prevent them from gaining business thereby.

The public in that case would get the benefit. The cutting line would get only a normal share of business, and it would lose on its year's business the difference between the cut rate and the former tariff rate.

The plan now proposed is that the principle upon which Mr. Fink acted shall be incorporated into the law. But while Mr. Fink forced the cut rate on all competing roads alike, this law would force it upon the rebating road alone, and it would be voluntary with competing roads to adopt it or not as they saw advantage or loss in so doing.

Responsibility of connecting lines.—It has been said in criticism of this bill that section 2 would, if enforced, impose hardships upon connecting lines when the initial line on a through shipment had cut the joint tariff rate without the consent of the connecting lines. Mr. Fink in his addresses to the "joint executive committee" called attention to this feature, but he said that a connecting line whose agent at the connecting point neglected to examine and correct waybills should be held equally responsible for a cut with the initial road making the cut, and he said further: "It should be made impossible for any of the initial roads to bill freight at less than agreed rates without it being discovered," which remark is evidence that such an arrangement was, in his judgment, practicable. At Mr. Fink's suggestion the Trunk Line executive committee, July 20, 1882, and the joint executive committee at its meeting, July 26, 1882, 30 railroads being represented in the latter meeting, adopted unanimously a resolution directing agents at connecting points to examine waybills, and when rates were found to have been cut to hold the freight at the expense of the initial line until the waybills had been corrected.

In this connection attention is invited to the following provision of section 2 of the proposed bill in harmony with Mr. Fink's policy that the offending line be held responsible, viz: "*Provided*, That the Commission, in determining the portion of a joint rate to be received by each carrier party thereto, shall fix the guilt upon the road or roads responsible for the rebate or discrimination, and shall apportion the shares of the joint rate accordingly."

In practice this provision would operate as follows: Suppose that the through tariff rate is $1 per hundred pounds, and has been cut to 90 cents by the initial road. The share of the initial road, say, is 25 cents of the tariff rate. If the initial road is found to be alone responsible for the cut, and the cut through rate was enforced under the proposed law, the share of the initial road of the joint through rate would be 25 cents, minus the cut of 10 cents, or 15 cents net, and the connecting roads would not suffer loss. This is the principle of railroad justice as applied by railroad men to railroad management in working out their own salvation under a leadership as capable as the railroads of this country ever enjoyed.

Responsibility of officers and stockholders for rebates.—Referring generally to rebates, it has been said by a railroad attorney that "the action of the traffic officer who gave this rebate might be accidental—that is, it might not be an intentional act—and it would be very unjust in many instances to punish the stockholders of a company for the wrongdoing of some inferior officer who committed a wrong, perhaps of a minor character, perhaps accidentally, or in an excess of zeal."

If agents or traffic managers of roads give rebates in violation of law there is strong presumptive evidence of intent, and that they do so with the tacit consent of their superiors. The policy of some railroad managers is illustrated by the Quaker's remark to his son, "Make money, honestly if thee can, but make money." The railroad manager says, "Get business, without violating the law if you can, but get business." Fundamentally the stockholders are responsible

for the acts of the officers they elect; the officers are answerable to the stockholders for the conduct of the affairs of the company, and the subordinates are answerable for their acts to the officers.

The carelessness of an engineer or a switchman who wrecks a train can not be held as excusing the company from paying damages to the injured passengers. Injuries inflicted upon passengers in railroad smashups are always unintentional and accidental as to the road and its employees. Nevertheless, when the company is compelled to pay damages to the injured or to the families of the killed, the stockholders are the ones who are punished. It is not an unjust law that compels such payment. It would be gross injustice to the injured if they were denied such redress.

In no respect does the application of the principle differ, nor is justice violated, if the stockholders of a railroad are punished for the unlawful act of a traffic agent who has given rebates to favored shippers to the injury of other shippers.

Judge Grosscup touched the vital point of the question in his remark at Boston, March 11, that—

"Any difference in rates permitted by law, even though based on the bulk of the tonnage handled, is a direct and effective blow, by the nation itself, at the principle that every man, whatever his present business size, shall be given equal conditions and equal opportunity. To destroy that principle is to destroy competition, and further concentrate wealth in fewer hands. * * * Secret rebates are as unjust as direct differences in rates. * * * In this country there is no such thing as size to a business man. The man of little size expects to get big. He has a right to get big. He has a right to have the atmosphere of equal opportunity and equal conditions in which to grow, and excepting, of course, some unit, such as a ton or a car, the charge ought to be the same for the little as for the big shipper."

The giving of unlawful rebates by traffic agents would be preventable if the agent felt assured that such acts would be followed by his dismissal, and the officers of the company would find a way to remove an offending agent or to bring him under control if a punishment of suitable severity were certain to be imposed upon the road for the violation of the law against the giving of rebates.

The committee thereupon (at 9 o'clock and 45 minutes p. m.) adjourned until Tuesday, May 23, 1905, at 11 o'clock a. m.

TUESDAY, *May 23, 1905.*

The committee met pursuant to adjournment.

Present: Senators Elkins (chairman), Cullom, Kean, Dolliver, Clapp, and Newlands.

STATEMENT OF MR. H. T. NEWCOMB.

Senator KEAN (in the chair). What is your name?
Mr. NEWCOMB. H. T. Newcomb.
Senator KEAN. Where do you live?
Mr. NEWCOMB. Washington.
Senator KEAN. What is your business?
Mr. NEWCOMB. I am a lawyer.
Senator KEAN. Are you a statistician?
Mr. NEWCOMB. I have delved a little in these matters.
Senator KEAN. You are not a professor of economics?
Mr. NEWCOMB. Not a professor.
Senator KEAN. Of economics?
Mr. NEWCOMB. Nor of anything else.
The CHAIRMAN. Have you prepared a written statement?
Mr. NEWCOMB. I have.
The CHAIRMAN. Please state your experience on the subject of rail-

roads, and what positions you have held under the Government, if any.

Mr. NEWCOMB. I am practicing law at present in the city of Washington. I was designated for appointment in the office of the Interstate Commerce Commission by Judge Cooley in 1888.

Senator CULLOM. How long did you remain in that service?

Mr. NEWCOMB. I remained there until 1895, after which I took charge of the transportation statistics compiled in the Department of Agriculture.

The CHAIRMAN. How long did you occupy that position?

Mr. NEWCOMB. I held that position for about four years, and was then for two years chief of the division of agriculture in the office of the Twelfth Census; for a short time I edited a railway trade paper at Philadelphia; and since then I have been practicing law in the city of Washington.

Senator CULLOM. Did you leave the Interstate Commerce Commission for any particular reason?

Mr. NEWCOMB. I left the Commission in order to take a better position in the Department of Agriculture. I will also say, as showing my interest in this subject, that I have published a number of reports on railway and similar subjects, among them a report on changes in the rates charged for transportation services both by rail and water. That was while I was in the Agricultural Department. I have also written two small books, besides a number of magazine articles and pamphlets, on this subject.

Senator DOLLIVER. Railway books?

Mr. NEWCOMB. One was entitled "Railway Economics." It has been used in some of the colleges, and perhaps has been more kindly received than it deserves. The other book was "The Postal Deficit," a special discussion of postal affairs.

The CHAIRMAN. You have a written statement prepared, as I understand, and you may now proceed with that, making comments upon it as you proceed.

Mr. NEWCOMB. Mr. Chairman and Senators, I have the honor to appear here, at the request of certain railway corporations, to relate facts and to express conclusions that have come to me as a student of the economic relations between American railways and American industry. Claiming no qualification to speak upon this subject except that of a profound interest, it may be worth while to say, as a sort of personal introduction, that, after having had some experience in railway service, I was selected by the late Judge Thomas M. Cooley for appointment in the Bureau of Statistics of the Interstate Commerce Commission and remained in its employ for seven years until I resigned to take charge of the compilation of transportation statistics in the Department of Agriculture. Subsequently I was for two years chief of the division of agriculture in the office of the Twelfth Census; for a short time editor of a railway trade paper, and for over two years I have practiced law in the city of Washington. While with the Interstate Commerce Commission I assisted in the preparation of the McCain report on changes in railway rates, which was published as a part of the well-known Aldrich report on wages and prices,[a] and of several appendices to

[a] See Wholesale Prices, Wages and Transportation (report of Mr. Aldrich from the Committee on Finance), Report No. 1394, part 1, Fifty-second Congress, second session, pp. 397–658.

the annual reports. While with the Department of Agriculture I published several reports on railway matters, including one entitled "Changes in the Rates of Charge for Railway and Other Transportation Services," which is an historical study of the trend of rates from 1847 to the date on which it was issued. I have also written two books on railway problems and a large number of magazine and review articles. These details, perhaps, suggest the extent of the interest which has led me to appear before you.

GENERAL PRINCIPLES.

The observations which I am about to make may be clearer if I outline at the beginning certain principles which I believe to be thoroughly established. These principles are:

First. The business of interstate transportation, however conducted, is so far public in its nature that the agencies which, as common carriers for hire, participate in it, as well as the highways which they traverse, are proper subjects of legislative regulation.

Second. This legislative regulation may rightfully go as far in the direction of fixing the charges for the services performed, in prescribing the character and quality of those services, or otherwise, as the interest of the general public demands. The term "general public" includes railway employees and the owners of railway property.

Third. Capital invested in interstate railways is invested subject to the reserved right of public regulation, and is not entitled to further consideration in determining the scope and form of regulative measures than grows out of the fact that the wage earners and others dependent upon it for a livelihood, including its owners, are themselves a part of the public and that injury to one industry is pretty certain to be diffused to the injury of all industry.

Fourth. Railway service is a commodity and railway charges are prices, not taxes.

Fifth. Laws regulating prices or wages have universally failed to do what they were intended to do and have usually operated to the detriment of those in whose behalf they were enacted.

Sixth. Rebates and unjust personal discriminations can not be made more illegal than they are now, and the present law is broad enough to cover all devices by which rebates can be effected if they can be reached by any law. If the law has not been enforced, it ought to be enforced.

Seventh. Changed commercial conditions are every day making rates unreasonable which have been reasonable. Every change in an existing schedule by a railway carrier is an attempt to remedy or to prevent an unjust discrimination among places or classes of traffic. These changes are sometimes made unwisely and sometimes too slowly. But with a rate-making commission they would be made more unwisely and much less rapidly. The railways must stop making voluntary changes, when every change has been made a club to compel fifty more. The Commission can not make one-tenth of the changes that ought to be made every day. Iron-clad rules, political considerations, and sectional preference would usurp the place of industrial needs. In short, it is not expedient that the legislative right should be exercised to the extent or in the way urged.

Conclusion.—I do not draw from the foregoing the conclusion that the enactment of the legislation now proposed would be more inju-

rious to those directly interested in railways than to others. If charges were drastically reduced; the principal immediate loss would fall upon labor and the secondary loss upon general industry. The owners of railway property, except in a few instances, could and would protect themselves against material loss. Drastic general reductions would be, however, very unlikely under any plan now proposed. The real dangers are the application of arbitrary and general rules to conditions that demand extreme elasticity. The normal decline in rates would be stopped or notably retarded. The special adaptation of rate schedules to the conditions of developing industry would become impossible. Manufacturing and producing industries would be the chief sufferers, because their prosperity and growth are dependent upon the prompt adjustment of rates to the rapidly changing conditions of trade and commerce.

I have listened attentively to your proceedings of the last four or five days, and as I have listened I have awaited the approach of the moment when I should address you with a growing sense of reluctance to take up the task I have assumed. It had seemed to me to be my duty, as of all having to deal in any capacity with this great problem, to brush aside all personal considerations and to treat it honestly and fairly, with no thought that to do so could reflect upon the capacity or wound the self-esteem of any individual or group of individuals. So thinking, I had strung together, in crude outline, some of the facts and figures which have led me to believe that the functions which the Interstate Commerce Commission once attempted to perform, and now seeks to have conferred upon it, are impossible of performance by any body, however able its membership. It did not occur to me that such a presentation of the facts reflected upon the Commission or any of its members, except in so far as they have been led astray, in common with many others, by false conceptions of the purpose of the law and the proper duty of government. But, one by one, I have heard the statements of the members of that great and powerful Commission, and all of them in their several manners—and all their manners are admirable and convincing—one smoothly plausible, another with thundering invective, another softly insinuating—have seemed to me to have united in a determination to crush and annihilate, with the weight of their high position and great authority, all of those who disagree with them. Is it strange that an humble student of these great problems should shrink from such a contest? Nevertheless, I am so strengthened by the facts which I have compiled and so confident of the accuracy with which they point to closely related conclusions that, with your indulgence, I shall proceed.

In what I have now to say I shall be glad to be interrupted if there is any part of my statement on which further suggestions are desired, and I hope you will warn me if I attempt to go into unnecessary detail or otherwise to trespass unwarrantably upon your time and patience.

THE QUESTIONS AT ISSUE.

If statutes are not to be multiplied in mere sport with the established order or in a purely wanton desire to overturn existing conditions and to substitute untried relations whose outcome no man can foresee, every legislative proposal ought to be supported by arguments plainly dividing themselves into two classes:

First. There ought to be an accurate diagnosis of existing conditions. The need of change should be sustained by unimpeachable evidence of the existence of evils which demand a remedy.

Second. The proposed new law should be supported by convincing evidence that it embodies the particular remedy most likely to meet and successfully to overcome the evils disclosed by the diagnosis.

The proposal to take out of the hands of the shippers and railways the right of free negotiation concerning contracts for transportation, and to confer upon public authorities the duty of fixing the most important factor in those contracts—that is, the price at which transportation shall be purchased—can not be sustained by merely pointing out the shortcomings of railway corporations or of railway men, however great those shortcomings may be. Perfection is not the attribute of humanity or of anything humanly devised.

FRICTION, MECHANICAL AND INDUSTRIAL.

The most efficient mechanism that the ingenuity of man has yet contrived loses in friction a large proportion of the power which its use requires and successfully applies to the performance of the ends for which it was created but a portion of the aggregate power with which it is supplied. There is friction at every point of social and industrial contact. But the friction of the mechanical contrivance decreases with use and as the bearing parts become better adjusted through the continued performance of their proper functions. The mechanician does not discard the new machine because initial results do not equal theoretical possibilities, but patiently awaits the time when continued operation shall have reduced friction to the lowest practicable amount.

The industrial revolution which began with the invention of the spinning jenny and the power loom has accomplished greater changes within the relatively brief industrial period that has ensued than characterized all recorded history previous to its inception. In this revolution the steam locomotive and the railway have been the most salient, if not the most important, features. The railway, the steamship, the telegraph, and the telephone have welded together the markets of the world, until to-day the whole world is but one market. The sweeping changes involved have required successive adjustments and readjustments, and friction of the industrial sort has been at every stage a necessary and inevitable incident. New conditions have demanded new laws. Old legal principles have found new applications and new principles have had to be developed and applied. It may be that at times laws have not developed with the rapidity necessary to give proper legal sanction to the new relations made necessary by new commercial conditions, yet, on the other hand, it is undeniable that there has been much legislation which might better have remained unenacted.

It seems at least reasonable to suggest the inquiry, whenever new remedial legislation is proposed, whether the particular difficulties of adjustment in connection with new commercial conditions which it is intended to meet are not likely to disappear with a continuance of those conditions, as undue mechanical friction disappears with the operation of the machine in which it arises. If such is the case, legislative interference is not only dangerous, but is certain to produce much more harm than good.

From the close of the American civil war to the present time industrial changes have been more rapid in the United States than anywhere else in the world. That period has seen the railway system grow from a length of 35,000 miles to 210,000 miles; population has more than doubled; wealth has increased more than fourfold; populous cities and sovereign States have grown up where at the beginning was nothing but wilderness. Progress of similar character is going on to-day with undiminished activity. Railways have met this progress by constant adjustments of and reductions in the charges for their services. The average return to the railways per ton of freight carried 1 mile is to-day barely one-third of the return secured in 1870 and probably less than one-fourth of that obtained in 1860.

FREQUENT CHANGES IN RATES.

So rapid are the changes in the conditions of production and consumption that the rate which was reasonable and just yesterday may be unjust to-day, and that which to-day meets the difficulties which developed yesterday may in a week or a month have become as defective as the one which it superseded. Thousands of railway employees are to-day devoting their time, their energy, and their thought to the perfection of the adjustment of railway charges to the conditions of the industries which the railways serve. The extent of their activities may be measured by the results. Under the law which has been in force since 1887 interstate railway carriers are required to file schedules of their charges with the Interstate Commerce Commission. Under this law no less than 300 separate schedules of rates are, on the average, received daily in the office of the auditor of the Commission, many of these schedules containing hundreds of separate rates and not a few of them thousands. From two-thirds to three-fourths of these new rates are reductions from those in the schedules which are superseded.

Under date of January 19, 1905, Mr. Jesse M. Smith, auditor of the Interstate Commerce Commission, wrote to Hon. James R. Mann, of Illinois, a letter, in which he gave the following as the numbers of separate rate schedules filed by the railways named during the twelve months which ended with November 30, 1904:[a]

Rate schedules filed.

	Number.
Pennsylvania Railroad	4,123
New York Central and Hudson River Railroad	1,561
Illinois Central Railroad	6,344
Chicago and Northwestern Railway	2,178
Chicago, Rock Island and Pacific Railway	3,375
Chicago, Milwaukee and St. Paul Railway	2,591
Baltimore and Ohio Railroad	3,925
Louisville and Nashville Railroad	3,330
Northern Pacific Railway	774
Union Pacific Railway	789
Wabash Railroad	1,135
Total (eleven railways)	30,125

[a] Congressional Record, February 7, 1905, p. 2053.

THE DIAGNOSIS IN BRIEF.

This is the measure of the activity with which railway officers are to-day seeking to adapt the great agencies of commerce which they direct to the needs of American industry. It would be as foolish as it would be unnecessary to contend that changes are always made with the most desirable promptitude or that those which are made are always perfectly adapted to the situation which they attempt to meet. Omnipotence alone could attain such a result. Yet the measure of the complaint which is heard ought not to be mistaken for the measure of the evil which exists.

There is no shipper who would not like to have his goods carried for lower rates; there is no industry which would not like to have a greater share of the burden of maintaining the means of transportation shifted to other industries; there is no community or producing region which does not look with jealous eyes at some other community or producing region, wishing the while that in the race for commercial supremacy it might itself become the especial beneficiary of a particularly favorable adjustment of railway rates. New York, the great gateway of our foreign commerce, looks covetously at the relatively small percentage of grain exports which, at a rate 2 cents per 100 pounds lower than New York enjoys, moves through the port of Philadelphia and would like to have the charges to both ports equalized, while Philadelphia looks southward to Baltimore and sees no reason why the 3-cent differential allowed her southern neighbor should not be vouchsafed to her. The miller at Minneapolis sees train loads of grain carried past his mills at rates from Minneapolis to the Atlantic coast somewhat lower than those on flour, and refuses his support to the proposal to endow the Interstate Commerce Commission with rate-making power because that Commission did not sanction his contention that flour and wheat ought to go forward at equal rates. It would be possible to continue almost indefinitely the enumeration of rivalries of this sort which find their expression in pressure upon railway officers for reductions and modifications in rates and occasionally in complaints, more or less justifiable, that these officers, in their obstinacy or in their acquiescence, have failed to create the particular rate adjustments which would best promote industrial harmony and industrial progress.

Senator DOLLIVER. Did I understand you to say that the millers are opposing this legislation?

Mr. NEWCOMB. The millers of Minneapolis. The Northwestern Miller, the organ of the millers of Minneapolis, has been very active in opposition.

Senator FORAKER. The measure was advocated the other day by Mr. Bacon on behalf of the millers of Minneapolis.

Mr. NEWCOMB. I do not believe he represents them correctly.

Senator FORAKER. I do not think he claimed to represent them; he simply said, by way of illustration, that it was a gross injustice to them to give so low an export rate on grain.

Mr. NEWCOMB. The difficulty about that situation is that the Interstate Commerce Commission approved a difference of 2 cents per 100 pounds in the rates in favor of wheat.

Senator CULLOM. I understand that several millers, including Mr. Washburn, have letters here opposing this legislation.

Senator FORAKER. Their representative, as I read in the record, appeared before the committee while I was absent on account of illness, and testified against this kind of legislation. He claimed to represent large interests and to ship 200 carloads a day.

Mr. NEWCOMB. I think a close investigation of the movement in favor of this legislation would indicate that nearly all those who are very active in promoting it represent interests or regions which have reason to believe that the orders of the Commission will be favorable to them, and many of them have obtained such orders in the past.

THE PROPOSED REMEDY OUTLINED AND ANALYZED.

To-day the rivalries of which I was speaking when I was interrupted are commercial. The controversies which they cause are prosecuted along commercial lines; the contending parties sustain their positions by commercial arguments; and, finally, they are settled by the natural operation of the laws of trade, or they are left unsettled through the failure of those laws effectively to operate. The freedom with which the parties to these contracts negotiate is now little affected or impeded by political considerations or by the operation of any statute save that which justly and wisely requires that persons requiring similar services shall receive equal treatment and by the modified prohibition of greater charges for intermediate than for longer hauls in the same direction. It is proposed to change all this. There may be no distinct purpose to exclude in greater or less degree the commercial considerations which now govern, but experience shows that the Commission has sought to exclude them, and no sane man believes that a politically created body will ever be wholly controlled by nonpolitical considerations. And in the same degree in which commercial considerations are excluded a rate-making commission will always substitute political considerations, calling them, however, by the more plausible name of "social principles." It makes no difference how frequently the changes may be rung upon such words as "reasonableness" and "justice," there can be no other end to any proposal to invoke governmental aid in the settlement of trade disputes than precisely this substitution.

LESSONS FROM EXPERIENCE.

The principle involved is not a new one. The legislative bodies created by English-speaking peoples have on many occasions attempted to modify by statute the natural relations of trade and commerce. When the Black Death diminished the number of English workmen and wages rose so that landowners felt an unaccustomed economic pressure, Parliament sought to fix the wages of labor and thus to deprive workingmen of the increased earnings which the market justified, but these laws only furnished an instance of the impotence of human intention when it seeks to repeal or modify natural laws. A more familiar example is found in the almost universal effort to regulate interest on loans, and it is notorious that laws against usury have had little effect except to accentuate the burdens of borrowers.

More nearly akin to the experiment now proposed are those undertaken by the American States which have sought to regulate rail-

ways by the direct or delegated exercise of the legislative authority to prescribe rates for the future. The meagerness of the evidence concerning the results of this sort of legislation seems to me to challenge the attention of those who realize what a flood of light it might throw upon the legislative proposals now under consideration. Although the Interstate Commerce Commission has for years demanded rate-making power, I know of no competently conducted effort to discover whether rate making by legislatures or by commissions has worked successfully where it has been tried. Such study as I have been able to give convinces me that it has not.

IN GEORGIA.

The experiment has been tried in Georgia about as long and as consistently as anywhere else. Yet Georgia shippers are not satisfied. Their attitude is well expressed in the following extracts from a recent editorial in the Atlanta Journal:

> A merchant in Marietta can ship certain goods to Chattanooga for 15 cents per hundred; to Knoxville for 19 cents per hundred. To ship the same goods to Atlanta he must pay 30 cents per hundred; to Macon, 70 cents per hundred. Atlanta is 20 miles from Marietta, Chattanooga is 128 miles, and yet the Chattanooga merchant pays just one-half the freight the Atlanta merchant does. Why? Because Chattanooga is out of the State and Atlanta is in it. This is merely one of a hundred instances where Georgia points are placed at a positive disadvantage in freight rates because they are located in the State.

Senator CLAPP. What were those three Georgia points?
Mr. NEWCOMB. Marietta, Macon, and Atlanta.

The editorial from which the foregoing is an extract shows clearly that the results of a drastic regulative system are not now wholly satisfying to the people of Georgia. It has been suggested that the psychological aspect of railroad regulation of this sort is too often ignored, and that where the reduction of rates is more or less vigorously looked after by public authorities railroad officers are not unlikely to leave the duty of looking for desirable reductions wholly to the body with which the legislature has required them to share it. Something of this sort seems to have occurred to the shippers of Georgia, for in the editorial already quoted there appears the following explanation of the situation against which the complaint is made:

> When a merchant approaches the railroad for rates in Georgia, he is met with the reply that the railroad commission regulates that, and he can get no reduction.
>
> If, however, they are asked for rates to towns outside of Georgia, the application receives immediate and favorable consideration, and the best rates are granted, because the point of destination is beyond the limits of the State, and therefore not controlled by the State commission.

In another paragraph of the same editorial the situation is summarized with similar effect, and perhaps even more forcibly, as follows:

> As matters now stand, the plain logic of the situation is that within the State of Georgia, rates being regulated by the railroad commission, shippers are powerless to receive fair treatment from the railroads, while to points just beyond the limits of the State they can receive the most favorable rates, and shippers from these points into the State receive the lowest rate that can be obtained; much lower, as a rule, than the Georgia shipper can get.

Anyone would underestimate the significance of the foregoing who failed to note that the State rates and the interstate rates are over the same railroads and must be promulgated by the same officers, the controlling and, in fact, the sole difference being that in the case of the interstate rates the shippers deal at first hand and face to face with the railroads and their officers, while in the case of the State rates the legislature has interposed its authority and that of the State commission between the two actual parties to every contract for railroad service, thus requiring the negotiations to be conducted at much more than arm's length. The method of doing business thus imposed upon the shippers of State traffic, and the railroads carrying it, is cumbersome and absurd. It is only natural that its consequences should be burdensome.

Senator FORAKER. What is the basis upon which they fix rates in Georgia?

Mr. NEWCOMB. The commission establishes a complete schedule of rates.

Senator FORAKER. Is that on a distance basis?

Mr. NEWCOMB. Largely on a mileage basis.

Senator FORAKER. It is not an arbitrary rate.

Mr. NEWCOMB. The rates, as given in the schedule, are in cents per hundred pounds between the different stations, but the rates are understood to be, and are, in fact, based upon the mileage, but possibly with variations in individual cases, not extensive at all in number.

Senator DOLLIVER. Why does not the commission fix reasonable rates in Georgia?

Mr. NEWCOMB. I think that a commission always has great difficulty in seeing any consideration except distance. They can appreciate distance. They can see a mile when they can not see a mountain.

Senator DOLLIVER. Mr. Watson, in the April number of his magazine, says that the railroads control the commission.

Mr. NEWCOMB. I presume Mr. Watson knows more about the Georgia commission than I do.

Senator CULLOM. If the rates are 30 cents a hundred pounds for the short distance from Marietta to Atlanta, it seems to me it would be a pretty stiff rate from Atlanta to the outer edge of the State, or from the north line to the south line of the State, for instance.

Mr. NEWCOMB. That is probably a rate on goods taking one of the higher classes, and perhaps it is not extraordinary for that distance. But, under that adjustment, it seems as though it could not be a very satisfactory adjustment for the Atlanta merchants.

Senator CULLOM. Since you have brought the Georgia rate into your statement, perhaps it would be well for you to file a supplementary statement on that subject for our benefit.

Mr. NEWCOMB. I shall be glad to do that.[a]

Senator CULLOM. That supplemental statement showing whether or not, when they come down toward the seacoast and strike the navigable rivers that flow into the ocean, they make any difference.

Mr. NEWCOMB. I will bear that in mind. I wish to say, however, as to this kind of interference with the normal adjustment of business, that seemingly high rates, under such circumstances, do not

[a] This statement will be printed as an appendix when received.

produce high revenue to the railroads, but that long-continued supervision by a State commission gets business into such a condition that a drastic reduction, or reduction to the level fixed in surrounding communities where rates have been allowed to decrease normally, would be very unfair because business has been hampered and development retarded.

Senator CLAPP. You say "where they have been allowed to decrease."

Mr. NEWCOMB. What I mean is, let them alone and they will decrease of themselves; interfere with them and the decrease stops, for the reason given by the Atlanta Journal, which is very ably stated, that the railroad man will not reduce his rates—can not reduce his rates.

Senator CLAPP. You say if the Georgia commission did not interfere, but let the rates alone, they would not be so high?

Mr. NEWCOMB. If the Commission had been able to make new rates and make them intelligently every day, every week, and every month; to make the continuous adjustments which the railways make under normal conditions, there would have been the same decline as in other States where business had not been interfered with; but no commission can do that. They can not supervise business in any such detail as would be necessary to do that.

Senator CLAPP. If they can not supervise and can not interfere, why do you think that interfering with local rates would prevent the decrease?

Mr. NEWCOMB. You misunderstand me. I mean while you can put this power into a statute, you can not make it physically possible. When the statutory power exists the railways can not make the desirable reductions, for every reduction is going to be a club to compel some other reduction.

Senator NEWLANDS. Your idea is that even though they have a free hand they will not exercise it?

Mr. NEWCOMB. They can not exercise it; they can not afford to exercise it. You force the railway officers into this psychological attitude—that you make each man an advocate of his own rates; and it is a very poor advocate who can not convince himself of the righteousness of his own cause. He knows that he may have to defend the rates before the Commission, and so he defends them before everybody.

Senator CLAPP. If your argument is good, why is the alarm felt that interference by legislation here is going seriously to cripple the revenues of the roads?

Mr. NEWCOMB. I do not believe that intelligent railway men feel that the difficulty is anywhere near so simple as that. The thing that they fear is general stagnation of business; that hampering and restriction of this sort will hurt them in common with the rest of the public.

Senator CLAPP. They do not so much fear actual reduction of rates as proposed legislation to reduce the rates?

Mr. NEWCOMB. I do not believe any commission will often attempt to make large reductions. One case, decided by the Interstate Commerce Commission, attempted to do that—the Maximum Rate case—but it was so plainly confiscatory that I believe any court would have

enjoined the operation of that order under any statute that you could write. This seems so clear to me that I have not often thought it best to cite it.

Senator DOLLIVER. I doubt very much whether any court would enjoin the order.

Mr. NEWCOMB. Have you looked over the rates, Senator?

Senator DOLLIVER. I have looked over the order of the Commission and read the arguments, and it struck me that it was a very reasonable decision that was reached in that case, although I will admit that it was a very big case.

Mr. NEWCOMB. I have always felt that that order could not have been enforced, no matter what the law was.

The CHAIRMAN. What was the amount of the reduction?

Mr. NEWCOMB. I am not sure of the exact figures, but I think in many cases it approached 50 per cent. But there were worse things than that in that order. There was the general breaking up of conditions that had long existed. I think ever since the construction of the Cincinnati Southern the distributing rate from Cincinnati to Knoxville and Chattanooga had been the same—76 cents on first class. The Commission reduced this rate to 53 cents to Knoxville, and reduced the rate to 60 cents to Chattanooga, giving Knoxville an advantage over Chattanooga of 7 cents a hundred pounds, which would have tremendously crippled the business of Chattanooga. Chattanooga was not represented or heard before the Commission in that case, and there is not, in the decision of the Commission, a line or a word to indicate that it found the former adjustment unfair or unjust. The same sort of breaking down of long-established conditions followed all through the South. There was also a differential made in favor of Rome as against Atlanta, both towns having formerly had the same rates. The members of this committee undoubtedly know something of the way post-offices and other public buildings are occasionally secured for particular towns, and it may be worth observing that Mr. Clements, a member of the Commission, lived at Rome. The rates from Chicago and Cincinnati to Meridian were made the same on some classes, and very nearly the same on others. There had been the ordinary differential in favor of Cincinnati on that business and by changes of that sort Cincinnati would have lost a large part of what it gained in the reduction, and there would have been a general upsetting of conditions in the South. It was a plainly confiscatory order.

Senator DOLLIVER. Against the railroad or against the towns?

Mr. NEWCOMB. I think it was plainly against the railroads. I am not sure that this breaking up of established conditions would have prevented its enforcement under some possible state of law, but I think you could have written no statute which would not have permitted the railroads to secure a preliminary injunction against that order under the Fifth amendment.

WOULD STOP VOLUNTARY REDUCTIONS.

The history of the experiments of the States in the direction of rate-making will show, I believe, that the purchasers of transportation invariably fare better with open-minded railway officers than they ever do with rate-making commissions. No less than 30,000 railway officers are to-day looking for opportunities to make profitable reduc-

tions in rates. They conduct this search not as philanthropists, or the agents of philanthropists, but because the first lesson they have learned as traffic officers and the most thoroughly accepted principle on which they act is that, under certain conditions, lower rates mean more business and an increase in revenue which exceeds the increased cost that the new business entails. They know that progress in this direction is a geometrical progression—that is, that more paying traffic, secured by lowered rates, means more prosperous customers; that more prosperous customers mean new items of traffic and enlarged movement of the old items, and that these augmentations will warrant other reductions in charges which will cause a repetition of the process. Under normal conditions and eliminating the items of traffic whose volume is not elastic, there will be no cessation in the downward trend of rates until every consumer is satisfied. But create a rate-making commission and everything is changed. The traffic officer who formerly sought for opportunities to reduce his rates is no longer open minded; he has been transformed into an advocate of the existing schedule and every item in it. He knows that a voluntary reduction will be used as a club to compel an involuntary one. He knows that until driven to plead confiscatory taking of property without due process of law at the bar of justice the revenues of his corporation will have no defender but himself and his fellow-officers. Therefore his answer to the shipper who seeks a reduced rate is very likely to be that it is the business of the Interstate Commerce Commission to make reductions.

Thus substantially the whole burden of adjusting rates to new conditions would be thrown upon the Commission. The nominal power of initiating changes in rates not complained against would be so limited in practice as to be too dangerous to be frequently exercised. And no commission of five men or of fifty men can order reductions, after investigations bearing the slightest resemblance to judicial procedure, with one-tenth of the rapidity with which they are now volutarily made. This retardation of the natural decline in rates has happened. Mr. W. M. Acworth, the highest English authority on railway economics, in a book published in 1905,[a] asserts that it is a "point of serious practical importance," to be considered in connection with the British railway legislation of 1891 and 1894, by which Parliament itself undertook to fix rates, that this legislation "has done much to prevent any natural and gradual lowering of rates." He describes the present situation as follows:

> A railway company is still free to lower. It has ceased to be free to raise. A manager may desire to lower a rate, hoping thereby not only to benefit trade, but also, by increasing largely the volume of traffic, to increase his own net earnings. But it is only a hope. In the nature of the case certainty is not attainable in advance. A prudent manager, therefore, will not, unless his hope is closely allied to certainty, lower a rate when he must fact a lawsuit before he can put it up again. Still less will a conference of managers—and most important rates affect many companies—allow one of their number more sanguine or, it may be, more far-sighted than the rest to go ahead and make experiments. This at least is what we might expect a priori. Any trader whose experience goes back to the years before Parliament began carefully to regulate railway rates in the interest of trade can say from his own recollection whether the attitude of a railway manager to a suggestion of a reduced rate is nowadays more or less sympathetic than it was thirty years ago.

[a] The Elements of Railway Economics, Oxford, The Clarendon Press, 1905.

Mr. Acworth further testifies that:

The law of undue preference in the hands of a court, where legal rather than commercial considerations necessarily rule, has undoubtedly also had weight in putting a stop to the isolated and tentative reductions which, when cumulated, result in a general reduction of the average rate.

THE INTERSTATE-COMMERCE LAW HAS HINDERED REDUCTIONS.

We are not without evidence that the present interstate-commerce law, in spite of the fact that, as administered, it has not been shown to endow the Commission with very effective power to compel reductions in particular rates,[a] has also operated so as to retard the natural general decline in railway charges. This law was approved by President Cleveland on February 4, 1887, and became effective sixty days later. Prior to that time there had been no statutory restrictions upon the charges for interstate railway services and no Federal supervision of those charges except such as might be exercised by the United States courts in the application to interstate commerce of the principles of the Common Law.

Under the provisions of the law of 1887 the Interstate Commerce Commission has compiled annual statistical reports descriptive of the railway system of the country and its operations, and the sixteen yearly volumes, which now bring the record up to June 30, 1903, afford the basis of most valuable comparisons between the different years of the period of statutory regulation. Fortunately, too, through the enterprise of the United States Department of Agriculture, under the late Secretary J. Sterling Morton, a comprehensive study of the available records of railway operations prior to 1887 was undertaken in 1896, and although the conditions of the inquiry made it impossible to secure complete results the data obtained are either fairly representative or in other cases are variant in plainly ascertainable directions. It is possible, therefore, to make important comparisons between the average railway rates and other significant facts of the period of seventeen years of statutory regulation for which complete official statistics are available and those of the period of similar duration immediately antedating the adoption of the interstate-commerce law.

The first comparative period selected—that during which interstate railway commerce, being free from statutory restrictions, was subject to no other limitations than those imposed by commercial conditions—began with the year 1870 and ended with that of 1886. The comparable period of statutory restriction, also of seventeen years' duration, began with 1887 and extends through the fiscal year 1903. The length of the railways of the United States at the beginning and end of each of these periods, and the increases, appear below:

	Year.	Railway mileage.	Increase.	
			Miles.	Per cent.
Period of free interstate commerce	1870	49,168	83,467	169.76
	1886	132,635		
Period of restriction	1887	144,676	63,301	43.75
	1903	207,977		

[a] I shall show hereafter that it does establish such power.

Thus, during seventeen years of freedom the railway system increased, proportionately to its length at the beginning, four times faster than during seventeen years of restriction. During the period of freedom railways were built at the rate of 4,910 miles per annum, while during the succeeding period of restriction, although the United States had grown amazingly in population and in financial strength, the annual rate of increase was but 3,724 miles. The financial depression of 1873, included in the earlier period, was quite as serious as that of 1893, which took place during the later period. The following table contains important data concerning railway traffic movement, rates, and earnings for each year from 1870 to 1886, inclusive:

Period of free interstate commerce.

Year.	Tons carried 1 mile per mile of road.	Average train load in tons.	Length of haul in miles.	Freight revenue per mile.	Revenue per ton.	Rate per ton per mile in mills.
1870	268,694	81.72	97.67	[a]$4,830	[a]$1.67	[a]18.89
1871	353,796	91.19	100.87	[a]5,171	[a]1.66	[a]17.89
1872	331,958	84.92	95.68	[a]5,520	[a]1.61	[a]18.46
1873	354,716	93.44	103.89	[a]5,148	[a]1.57	[a]16.18
1874	359,883	89.01	97.08	[a]4,794	[a]1.44	[a]15.20
1875	341,807	99.58	105.88	[a]4,260	[a]1.48	[a]14.21
1876	350,952	110.24	107.22	[a]4,051	[a]1.41	[a]12.17
1877	345,773	111.14	109.02	[a]4,266	[a]1.51	[a]12.86
1878	381,094	118.90	115.58	[a]4,534	[a]1.52	[a]12.96
1879	450,700	128.57	111.73	4,934	1.29	11.53
1880	465,732	134.83	109.19	5,539	1.36	12.32
1881	479,618	134.92	111.10	5,393	1.33	11.88
1882	457,016	137.55	108.89	4,728	1.17	11.02
1883	411,921	127.24	111.29	4,866	1.34	12.05
1884	410,461	132.04	114.65	4,621	1.30	11.36
1885	442,629	140.07	117.54	4,379	1.19	10.11
1886	473,659	131.94	114.61	4,550	1.14	9.99

[a] Currency values reduced to their equivalents in gold.

NOTE.—The data in the foregoing were taken from Bulletin No. 15, Miscellaneous Series, Bureau of Statistics, U. S. Department of Agriculture.

As has been said, the Department of Agriculture in prosecuting the inquiry through which the foregoing data were obtained was unable to secure information for all the railway mileage of any of the years covered. The following statement shows the proportion of the mileage of the country covered by each of the averages given for the first and last years of the period:

	1870.	1886.
	Per cent.	*Per cent.*
Tons of freight carried 1 mile per mile of road	49.20	79.23
Average train load	36.57	74.49
Distance traversed per ton (length of haul)	46.82	79.23
Freight revenue per mile of road	75.90	88.82
Revenue from each ton of freight moved	66.27	79.45
Rate per ton of freight per mile	48.93	79.23

The intermediate years show a gradual increase in the proportions of mileage covered from the lower percentages of the year 1870 to the higher percentages of 1886. A little consideration will enable anyone to understand the probable effect of the omissions of the successive years upon the general trend of each average. The mileage for which

the early records were obtainable was naturally that belonging to the corporations having the most complete and scientific business organizations. Now, it is evident enough that these companies are commonly those whose business is most successful and prosperous. In other words, the mileage excluded had relatively less traffic. Dense traffic means low rates but high earnings per mile. It follows that the first column understates the increase in density of traffic, the second understates the increase in the train load, the fourth shows a decrease in earnings per mile of line where probably complete statistics would show a slight increase, the fifth understates the decrease in average earnings per ton of freight carried, and the last understates the decline in average earnings per ton per mile. A generalization concerning the distance traversed is more difficult, but fortunately much less important. The increase shown in this average is not very significant, but it is probably excessive. In connection with the averages expressed in dollars and cents, the fact that currency values for the period during which gold was at a premium were reduced to their equivalents in gold by the Statistician of the Department of Agriculture should be borne constantly in mind.

Senator NEWLANDS. Assume that there had been no public regulation from 1887. I imagine that prior to that rates were quite high, but when they got down to a comparatively low level the reductions would not be so rapid.

Mr. NEWCOMB. The absolute difference ought to have been very much greater in the earlier period. I do not see any reason why the percentage of difference should be greater, but, as a matter of fact, it was very much greater during the first period of seventeen years than during the second seventeen years. I do not know of any other condition of controlling importance except the legislation.

The following table contains averages similar to those given for the period of freedom, for the years of restriction, from 1887 to 1903, inclusive:

The period of statutory restriction.

Year.	Tons carried 1 mile per mile of road.	Average train load, in tons.	Length of haul, in miles.	Freight revenue per mile.	Revenue per ton.	Rate per ton per mile, in mills.
1887	513,513	155.11	116.20	$4,769	$1.16	9.84
1888	511,894	154.84	116.86	4,482	1.09	9.41
1889	448,069	179.35	127.36	4,188	1.17	9.23
1890	487,245	175.12	119.72	4,568	1.10	9.41
1891	502,705	181.67	120.00	4,569	1.09	8.95
1892	543,365	181.79	124.89	4,922	1.13	8.98
1893	551,232	183.97	125.60	4,883	1.12	8.78
1894	457,252	179.80	125.88	3,981	1.10	8.60
1895	479,490	189.69	122.32	4,107	1.06	8.39
1896	523,832	198.81	124.47	4,322	1.03	8.06
1897	519,079	204.62	128.27	4,240	1.05	7.98
1898	617,810	226.45	129.78	4,773	1.01	7.53
1899	659,565	243.52	128.85	4,895	.97	7.24
1900	735,366	270.85	128.53	5,466	.98	7.29
1901	760,414	281.26	135.05	5,804	1.05	7.50
1902	793,351	296.47	131.04	6,114	1.03	7.57
1903	855,442	310.54	132.80	6,630	1.05	7.68

NOTE.—The data in this table were taken from the reports of the statistician to the Interstate Commerce Commission and (for the first two years) from Bulletin No. 15, Miscellaneous Series, Bureau of Statistics, U. S. Department of Agriculture.

The averages in the foregoing for the years 1887 and 1888 represent from 71.32 to 91.84 per cent of the railway mileage then in operation.

Those for the years from 1889 to 1903, inclusive, being from the reports of the Interstate Commerce Commission, are substantially complete.

The tables of averages which have been introduced afford the basis for very significant comparisons between the first and last years of the two periods and between the net changes of those periods. Such comparisons follow:

Item.	Period of freedom.			Period of restriction.		
	1870.	1886.	Increase (+) or decrease (−).	1887.	1903.	Increase (+) or decrease (−).
			Per cent.			*Per cent*
Tons carried 1 mile per mile of road	268,694	473,659	+76.28	513,513	855,442	+ 66.59
Average train load, in tons	81.72	131.94	+61.45	155.11	310.54	+100.21
Average distance per ton, in miles	97.67	114.61	+17.34	116.20	132.80	+ 14.29
Freight revenue per mile of road	$4,830	$4,550	− 5.80	$4,769	$6,630	+ 39.02
Average revenue from each ton	$1.67	$1.14	−31.74	$1.16	$1.05	− 9.48
Rate per ton per mile, in mills	18.89	9.99	−47.11	9.84	7.63	− 22.46

With such allowances, in the directions already indicated, for the incompleteness of the data for the period of freedom, as may properly be made, the foregoing comparisons show that the density of traffic, that is, the average ton-mileage per mile of line, increased more rapidly during the first period than during the second. It is certain, however, that the real increase of the first period was greater than is indicated, and therefore that the rates of augmentation of the different periods undoubtedly differed more widely than the percentages show. The train load, that is, the average number of tons carried 1 mile per mile run by freight trains, has also increased greatly, and probably somewhat more steadily than the averages indicate. All of the averages which represent earnings decreased from 1870 to 1886, but from 1887 to 1903 average earnings per mile of line increased. Much of the increase, however, was unquestionably consumed by increased operating costs, while another important portion represents the augmented annual capital charge properly due on account of vast expenditures for betterments and the consequent very much higher quality of the average mile of railway line. Nevertheless, it is most significant that both the average charge per ton of freight, regardless of the distance carried and the average rate per ton per mile transported, decreased much more rapidly when interstate railway commerce was wholly free than when it was restricted by Congressional legislation and by the supervision of the Interstate Commerce Commission. On account of the omissions noted, it is certain that the decline in the rate per ton from 1870 to 1886 greatly exceeded the 31.74 per cent shown and that the decline in the rate per ton per mile during the same period of freedom was much more than 47.11 per cent. Yet the corresponding, but far more accurate figures for the period of restriction show decreases of but 9.48 per cent and 22.46 per cent, respectively. Undoubtedly there are valid objections to basing comparisons of far-reaching significance upon data for single years. To obviate this objection the following table, containing comparisons between the yearly averages of the first and last quinquennial periods of each of the 17-year periods under consideration, has been prepared.

Item.	Period of freedom.			Period of restriction.		
	1870–1874.	1882–1886.	Increase (+) or decrease (−).	1887–1891.	1899–1903.	Increase (+) or decrease (−).
			Per cent.			*Per cent.*
Tons carried 1 mile per mile of road	333,799	439,137	+31.56	492,685	760,828	+54.42
Average train load, in tons	88.06	133.77	+51.91	169.22	280.53	+65.78
Average haul per ton, in miles	99.04	113.40	+14.50	120.08	131.25	+ 9.35
Freight revenue per mile of road operated	$5,093	$4,629	− 9.11	$4,515	$5,782	+28.0
Revenue from each ton moved	$1.59	$1.23	−22.64	$1.12	$1.02	− 8.93
Rate per ton per mile, in mills	17.31	10.91	−36.97	9.37	7.45	−20.49

The results of the comparisons in the foregoing table are no less significant than those afforded by the data in the statement which preceded it. Although neither the decline in the average payment per ton nor that in the average payment per ton-mile was stopped by the adoption of restrictive legislation, the statements supplement each other in proving that rates moved downward much more rapidly during the period when interstate railway commerce was free from statutory restriction.

A PARTIAL TRIBUNAL.

A great deal is heard in the discussion of railway problems, from those who know very little about railway conditions or practice, about the public advantages which would result from the arbitration of an impartial tribunal composed of experts who would decide rate controversies with no especial leaning toward the shipper or toward the railway. It is not necessary to point out in answer to this argument that contracts are best made when the negotiations are direct and without intermediaries; that the interposition between the two parties to a business transaction of another party who has no interest in it is shown by experience to be dangerous, or that arbitration is never desirable, in any contingency, save as the smaller of alternative evils.

Even if arbitration of the sort indicated were as beneficent as its most enthusiastic advocates fondly imagine the history of the Interstate Commerce Commission as a body and frequent utterances of some of its members show that it never has been and indicate that it never can be an impartial arbitrator. This conclusion might have been drawn with certainty from an examination of the incongruous functions of the Commission, but it is fully established by readily ascertainable facts. Thus in its Annual Report for 1897 (p. 19) the Commission asserted that it had been created "to provide a means by which the public could array itself against the carrier," while one of its members has repeatedly referred to it as the "advocate of the small shipper" and in similar terms. As a chain is never stronger than its weakest link the following divergent expressions attributed to two members of the Commission by a leading Chicago newspaper indicate how far it falls below the standard of judicial impartiality. It will be remembered that the Anthracite Coal Strike Commission of 1902–3 ruled that the matter of railway rates was not relevant to the issues it was created to try and that against this ruling certain labor leaders and periodicals, including the New York Journal, felt called upon to protest. The newspaper named severely criticised the

Strike Commission for refusing to go into the rate question and announced its own purpose to see that it was investigated. Accordingly, while the public dissatisfaction with the conditions growing out of the strike was at its height, the New York Journal filed a complaint concerning anthracite rates with the Interstate Commerce Commission. That body was then conducting an investigation in Chicago and, the fact that the complaint had been brought being telegraphed, representatives of Chicago papers naturally sought expressions from the Commissioners. One of the leading dailies of Chicago published in the same column the following radically contrasting statements which were attributed, respectively, to Chairman Knapp and Commissioner Prouty, and neither of which, so far as I have been able to learn, has ever been denied:

Mr. Knapp said:

"The Commission expects to take official cognizance of the subject at no distant date. Until then it would be improper for me to go into any extended discussion."

Mr. Prouty said:

"For years I have said that the rates on hard coal are excessive. Why are they so high? Simply because the railroads can put them where they please. They own the coal mines, the cars, and the roads. I regard the combination of hard-coal railroads as the worst trust in the country. I am heartily glad to see the evidences throughout the country of growing public sentiment against the trust methods of railways. If the people do not want trusts, why do they not commence the fight with the railways?"

"How can they?" he was asked.

"By making laws that will prevent the railroads from charging excessive and unreasonable rates, such rates as are charged on hard coal, for example. Neither the Interstate Commerce Commission nor any court can compel them to reduce the rate."

Some months after the foregoing was printed the complaint of the New York Journal (filed in the name of Hon. William Randolph Hearst) was brought to trial before the Commission. Mr. Prouty sat in the case and will no doubt participate in its decision. The defendant carriers probably hope, more or less confidently, that they have convinced him that the anthracite rates are not, as alleged in the interview, examples of "excessive and unreasonable" rates. The way in which Mr. Prouty's attitude appears to the public is pretty strikingly illustrated in the May, 1905, issue of Freight. This periodical, which is published in the interest of shippers, announces that Mr. Prouty is about to retire from the Commission, that he will seek a nomination for Congress, and that, if elected, he will, to use the words of the editor, "continue his fight against the railroads on the floor of the House." I would not cite these facts or any others for the purpose of criticising a single member of the Commission. If they had no other effect, they would be unworthy of a place in your records. But they are merely especially salient instances of the manner in which the environment of such a board is certain to operate upon the mental bias of more or less of those who make up its membership. There will always be some members who are so affected.

THE POLITICAL DANGERS.

It has been observed already that the proposed legislation would inject political considerations into controversies which are and ought to remain wholly industrial. There is no industrial community in the United States which does not compete with some other community or communities, and none which would not like to have its rates reduced or those of its competitors advanced. Boston complains because its rates on similar traffic are higher than those of New York; New York complains that it pays more than Philadelphia; Philadelphia that it pays more than Baltimore; all four would like to have the rates to New Orleans and Galveston greatly advanced. Only the other day a distinguished New England Senator, high in the councils of the President, announced that the purpose of the proposed legislation is the abolition of the differentials under the standard rates which permit the southern Atlantic ports to do any competitive business at all.

Senator CLAPP. Who was that?

Mr. NEWCOMB. Senator Lodge. He said in part:

> This movement is a movement for the equalization of rates. * * * It is a case of the rebates to individuals and of the differentials between points. * * * No railroad wants to give a rebate to anybody. * * * I believe that it would put more money into the treasuries of the railroads if there were no such things as rebates and differentials than the present system can ever put there. We have dealt somewhat with the question of rebates and individuals. They are comparatively easy to deal with, but when you come to the differentials between points you touch communities, and that is a very serious matter; and to-day New York and Boston are suffering from the railroad differentials, and are made to suffer for the benefit of points farther south.

The CHAIRMAN. Where does that quotation come from?

Mr. NEWCOMB. A speech made before the Middlesex Club of Boston.

The CHAIRMAN. You find that in a newspaper?

Mr. NEWCOMB. In the Boston Daily Globe of January 21, 1905.

The concluding sentence of the foregoing was received with great applause by the Middlesex Club of Boston and its guests. The abolition of port differentials would be very satisfactory to Boston, but carry the news to Philadelphia, Baltimore, Norfolk, Newport News, Wilmington, Charleston, Savannah, Brunswick, and Pensacola, and it would be received quite differently.

Senator FORAKER. Why do you omit New Orleans and Galveston?

Mr. NEWCOMB. It is a pretty long list already. They belong in the list.

Senator FORAKER. They are the principal southern ports, and that is the reason I make that inquiry.

Mr. NEWCOMB. They belong in the list. Yet the Commission is composed of the political appointees of a partisan (I do not use the word "partisan" as suggesting anything improper) President, and from the beginning New England and New York, together, have had two-fifths of its membership, while the South has never had more than one-fifth.

Senator CULLOM. You do not mean the Massachusetts commission?

Mr. NEWCOMB. No; the Interstate Commerce Commission.

Senator CULLOM. It has been said that it is political, but practically it is not. The members of the Commission are appointed

by the President, just as the judges of the United States courts are appointed.

Mr. NEWCOMB. There is a clause in the law saying that not more than three shall ever belong to the same political party, you remember?

Senator CULLOM. Yes, I know that.

Mr. NEWCOMB. Unfortunately there must for a long time to come be something of sectionalism in American politics. Is it not possible, even probable, that in spite of the most impartial purposes, some favor will be shown to the localities that are in political accord with the Administration or party in power? Certainly the likelihood of such unintentional bias is not lessened by the fact that the members of the Commission are appointed for limited terms, are almost certain to desire reappointment, and may be ambitious of further political advancement. It will be a sorry day for American industry when the question of port differentials or of the relations among railway rates, anywhere, becomes in reality a political question. Do the people of the United States wish to see the great parties which perform such useful functions in their Government divide upon the question whether wheat shall be made into flour for the use of eastern consumers at Minneapolis or at Niagara; whether live cattle or dressed beef shall be shipped east of Kansas City, Omaha, and Chicago; whether New Orleans, Galveston, or New York shall draw tribute from the greatest quantity of export grain, or whether the salt produced in New York or Michigan or Kansas shall be most profitably marketed in Iowa?

LESSONS FROM ABROAD.

Europe's lesson for the United States—

Says Prof. H. R. Meyer, formerly of Harvard University and now of the University of Chicago—

is that any thoroughgoing and effective effort to regulate railway rates will arrest the decline of railway rates, will prevent the railways from developing a volume of traffic sufficiently large to justify the building of railways of the American standard of efficiency, will check the development of the resources of the country, and will demoralize the politics of the country.

Australia's lesson for the United States—

Declares the same authority—

is the visible helplessness of the politician, the absolute inability of the politician to safeguard and to foster the long-run interests of the country in a community of which every section has become demoralized and debauched through an extension of the functions of the government. * * * Australia's lesson is that the politician in charge of the State never will be permitted to become a business man.[a]

A single illustration of the manner in which political considerations are applied under a system of government rate making to the determination of what ought to be purely industrial problems may be selected from the large number given by Professor Meyer. From 1877 to 1891 the rate on grain over the German government railways

[a] For a thorough discussion of the disastrous consequences of official railway rate-making and of government railway ownership see the series of articles contributed to the Railway Age of July 10, 1903, and succeeding weeks, by Professor Meyer, and also his testimony before this committee.

from eastern Prussia to the industrial centers along the Rhine remained at 1.557 cents per ton per mile, although from 1888 the agricultural interests of the former region had demanded a substantial reduction. After repeated denials by the bureaucracy the crop failures of 1891 brought about final acquiescence, in the especial interest, however, not of the eastern agrarians, but of the mining and factory population of the Rhine provinces. Under the reduced tariff there was a rapid augmentation of the grain movement; but the government of Saxony protested that its farmers and millers, being located half way between the grain-growing regions of eastern Prussia and the Rhine provinces, had a natural right to supply their home demand for grain and flour and that they ought not, by means of low rates over the government owned railways, to be subjected to the competition of the farmers and millers of eastern Prussia. Similar complaints were lodged on behalf of the farmers and millers of Bavaria, Wurttemberg, and Baden. Finally, in 1894, the governments of the protesting provinces notified the Prussian government that their legislative representatives would not vote for the bill authorizing a commercial treaty with Russia unless the reduced rates on grain were discontinued. In response to this demand the rates on grain were put back, in April, 1894, to the point at which they had been fixed in 1877. The natural objection of eastern Prussia to this restoration of the old rates was coupled with the statement that the protective duty of $8.75 per ton on grain was of no use to that region unless its inhabitants were permitted to dispose of their surplus grain in the protected markets of Germany. Thereupon, finding itself under the political necessity of denying them the privilege of selling their products within the Empire, the Imperial Parliament took the only action which was left to it, and gave the eastern landholders an export bounty of $8.75 on grain in order that they might sell in Great Britain the surplus which they were not permitted to sell to the people of Germany. Under this law, in the year 1900, the eastern Prussians exported 327,000 tons of bounty-fed wheat and rye, while at the same time western Germany imported, by sea and by river, 2,700,000 tons of wheat and rye on which it paid a duty of $8.75.

POWER TO INCREASE RATES.

It is important to note that the Commission desires the power to fix minimum as well as maximum rates; that is, to order rates to be increased as well as to order them to be lowered. The Commission has announced that many rates are too low (Annual Report for 1897, p. 22), and it follows that some ought to be advanced if others are lowered. In fact, this is an essential corollary to the well-known fact that railway property, as a whole, produces a very low return upon the investment. In urging, in 1897, that it be given rate-making power, the Commission explained at length its desire to be empowered to order advances in rates, saying:

> There is, moreover, one class of discriminations which we have never possessed the power to effectually correct, even while we assumed the right to fix the maximum rate. * * * The most bitterly contested cases now pending before us are of exactly that character. * * * What is necessary here is the right to fix a minimum rate, to say that the carriers shall not charge below a certain rate. * * * It may well be inquired whether a carrier

should be prohibited from making as low a rate as it chooses. * * * The very reason why we suggest that the Commission be given this power to fix a minimum rate in certain cases is to preserve the rights of the public by preventing an act of unjust discrimination. (Annual Report for 1897, pp. 24–25.)

There is scarcely any complaint that railway rates are excessive per se, and no well-founded complaint of that character. No allegation of absolute unreasonableness in charges has ever yet survived the test of judicial scrutiny; the Commission has never declared a rate to be excessive in and of itself, except after comparing it with other rates or the revenue derived from it with other earnings. The relations among rates furnish the real element of controversy.[a]

Thus, adjustments may be found to be unreasonable, but rates, as such, can not be shown to be in that condition. But if only the difference between one rate and another is in controversy, it can be just as effectively modified by raising one of them as by lowering the other. No one contends, for example, that a rate of 20 cents per 100 pounds on grain shipped from Chicago to New York is unreasonable, but it is now contended by New York interests that a difference of 3 cents in favor of Baltimore is excessive. If the Commission, having obtained the power now sought, should sustain this contention and order the carriers to cease and desist from enforcing a differential of more than 1 cent, its order could be obeyed by reducing the New York rate from 20 to 18 cents or by raising the Baltimore rate from 17 to 19.

Senator FORAKER. Measured by the differentials they do not seem to have suffered much on that account.

Mr. NEWCOMB. The Commission has not had the authority which it is proposed to give it.

Senator CULLOM. I think the Commission is absolutely impartial.

Mr. NEWCOMB. I did not at all mean to intimate that it is not.

Senator CULLOM. The suggestion has been made that there is politics in it, but, as a matter of fact, there is none in their official conduct.

Mr. NEWCOMB. I do not mean to say that, but I believe it would be very easy for politics to get in.

Senator CULLOM. So it is easy for politics to get into any place that is open.

Mr. NEWCOMB. But with the greater power it would have, it would be easier for politics to get in. We know how it is now in many States; we know that men running for the office of railroad commissioner, where that office is elective, in conducting their campaigns before the people, tell what great reductions ought to be made and what great reductions they will make.

Senator NEWLANDS. Your idea is that if the question of differentials is submitted to the Interstate Commerce Commission that will provoke a conflict of sections, each section being desirous of having representation on the Commission. Is that it?

Mr. NEWCOMB. I think even if we were to admit that no member of that Commission would ever be actuated by what he would regard as political considerations, we must still realize that they would be actuated by their associations and their friendships. It is not pos-

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[a] As frequently held by the Commission, application of the terms "reasonable" and "unreasonable" necessarily involves comparison. (Annual Report for 1898, p. 27.)

sible, it seems to me, that gentlemen representing New York and New England will realize the demands of the industrial South as would gentlemen from the South.

Returning to the question of the relations among rates. If, in such a case as that of the port differentials between New York and Philadelphia, the companies interested chose to seek to satisfy an order to reduce the difference by raising the lower rate instead of by reducing the higher rate, what agency could compel them instead to lower the just and reasonable rate to New York? Indeed, in such a situation, where one rate is reasonable in itself but the adjustment as compared with some other rate is unfair, it is obvious that the other must be too low and that the only proper remedy, the only one which would be sustained on appeal to the courts, must be an advance of the lower rate. The Commission has, in its reports, indicated many cases in which it would have exercised this power to prescribe minimum rates. In one case (Annual Report for 1897, pp. 24–25) the power would have been used to require an advance, or perhaps to prevent a reduction, in the rates on lumber from Winona, Minn., to Kansas City, Omaha, and contiguous territory. Again, in 1898 the Commission enumerated (Annual Report for 1898, pp. 23–24) three cases of great importance which it thought served as illustrations of its contention that the fact that it can not prescribe minimum rates constitutes "a serious defect in the statute."

AN INELASTIC SYSTEM.

The methods of rate making proposed would inevitably subject American industry to arbitrary and inelastic conditions, under which progress would be checked. A serious vice of legislative interference with the business relations among the participants in industry is that the insight of the legislature, or its agents, in business matters can not be as keen as that of those directly concerned in them, nor is the impulse to secure accurate and complete knowledge equal to that due to the rigid responsibility for commercial success or failure imposed by the competitive conditions of private industry. The physical limitation is perhaps even greater. No Federal commission has now, or will ever have, the multitudinous agencies for studying the needs of industry or the close touch with business life which railway officers now enjoy. If all other elements were supplied, as they never can be, no Congress would ever accord the funds necessary to employ a force adequate in mere numerical strength. Nearly all the applications for changes in rates now received by the railways are based either upon the claim that similar freight is being hauled the same distance for a lower charge or a greater distance for the same charge. As the railways could not, under the proposed law, afford to make changes shippers would soon stop submitting their representations of this sort to the carriers and would file them, as complaints, with the Commission. And how would they be handled? The history of the State commissions shows that they always make distance the controlling factor, and it is easy to perceive the reason and to foresee that the Federal Commission would do the same. Distance is the one salient, universal, and changeless feature which is always within the comprehension of a rate-making commission. The official vision, separated by half a continent from the facts, can

see a mile when it can not see a mountain. Such a body always struggles ineffectually, if at all, against the principle of the distance tariff. It may proclaim, as the Interstate Commerce Commission has proclaimed, the importance of other factors; it may protest, as the Commission has protested, that distance does not and ought not to control, but when the practical test comes it will, nine times out of ten, as has the Commission in an even greater proportion of its decisions, accord paramount influence to the distance factor.

Railway rate-making is essentially empirical. To be prosperous themselves railways must serve prosperous communities. The ultimate test of each rate is the degree of prosperity of the producer, the carrier, and the consumer. However thoroughly conditions are studied before a new rate is made, the results of its enforcement must be gathered promptly and in detail, and some one must be ready with the necessary power immediately to make a second change if the first is shown by experience to have been unfortunate. No commission can exercise these functions, nor can any commission ever respond with the needed rapidity to the daily changing conditions of interstate commerce. The pending proposals would stretch American industry upon a Procrustean bed and result in nothing but numbness, stagnation, and deformity.

Indeed, the history of the Commission shows that when it thought it had a giant's strength it attempted to use it like a giant. In the Freight Bureau cases, which afterwards went to the Supreme Court, the Commission, on the complaint of persons engaged in business in the cities of Cincinnati and Chicago, issued an order which, if it had been complied with, would have modified the existing relations among rates to substantially all southern points of destination. It would have decreased the areas within which certain important cities like Chattanooga, Atlanta, and Selma could do a jobbing business, while the distributing areas open to other cities would have been correspondingly increased. It is to be remembered that this was done in a case in which the interests of Chattanooga, Atlanta, Selma, and the other cities referred to were not represented before the Commission and had no opportunity to introduce testimony or argument. Nor is there a line or a word in the report and opinion of the Commission which indicates that it had found, or that there was any evidence from which it might have found, that the adjustment of rates as between these destinations was unjust. The drastic reductions ordered in this case—as, for instance, on first-class freight from Cincinnati to Knoxville from 76 to 53 cents per 100 pounds, and on fifth-class freight between the same points from 40 to 22 cents—are striking enough; but it is perhaps even more significant that the Commission saw fit to break up the long-established relation under which Knoxville and Chattanooga had enjoyed equal rates and to accord thereafter a considerable advantage over Chattanooga to the city of Knoxville. Again, the class rates to Rome and Atlanta had been the same, but the Commission chose to reduce those to Rome much more than those to Atlanta. For example, the first-class rate, which had been $1.07 to both cities, was reduced 32 cents at Rome and 21 cents at Atlanta, giving Rome an advantage of 11 cents per 100 pounds. The first-class rates to Anniston and Selma had been $1.07 and $1.08, respectively, but the Commission reduced the rate to Anniston to 86 cents and left the $1.08 rate in force at Selma. On the other hand, the rate

of $1.02 on second-class freight to Selma was reduced to 92 cents, while the 92-cent rate on second-class freight to Anniston was reduced to 73 cents, the reduction in this case to Anniston being 19 cents and that to Selma 10 cents.

The following table shows the changes, from Chicago and Cincinnati to the cities named, prescribed by the Commission in the Freight Bureau cases:

[Rates in cents per 100 pounds.]

To—	From—	Classes. 1. Old rate.	1. Rate ordered	2. Old rate.	2. Rate ordered	3. Old rate.	3. Rate ordered	4. Old rate.	4. Rate ordered.	5. Old rate.	5. Rate ordered.	6. Old rate.	6. Rate ordered.
Knoxville	Chicago	116	99	99	79	82	62	64	44	55	37	42	22
	Cincinnati	76	53	65	45	57	37	47	27	40	22	30	20
Chattanooga	Chicago	116	100	99	85	82	65	64	47	55	39	42	24
	Cincinnati	76	60	65	54	57	40	47	30	40	24	30	20
Rome	Chicago	147	114	126	97	106	79	85	61	71	49	56	34
	Cincinnati	107	75	92	64	81	54	65	44	56	34	43	24
Atlanta	Chicago	147	120	126	107	106	85	85	62	71	50	56	39
	Cincinnati	107	86	92	73	81	60	65	45	56	35	43	27
Meridian	Chicago	134	114	109	96	91	62	76	60	63	47	55	36
	Cincinnati	122	114	102	96	89	60	75	62	62	49	54	36
Birmingham	Chicago	119	111	103	96	83	72	64	52	55	44	42	34
	Cincinnati	80	87	79	74	68	60	55	46	47	36	36	29
Anniston	Chicago	147	126	126	107	106	85	85	62	71	50	59	39
	Cincinnati	107	86	92	73	81	60	65	45	56	35	46	27
Selma	Chicago	158	128	126	112	103	80	80	66	67	53	59	39
	Cincinnati	109	109	102	92	86	78	71	60	59	46	47	36

In examining the foregoing it should be remembered that the Commission recognized that it would be necessary to adjust very many other rates to those specifically required, and ordered that such changes should be made. This single order affected thousands of rates and substantially all through south-bound traffic east of the Mississippi river and destined to points south of the Ohio and Potomac rivers. Had the order been enforced it would have irretrievably damaged the distributing business of many cities which were not parties to the case; it would have thrown great railway systems into bankruptcy and the original complainant, Cincinnati, would have lost, through changes in the relation of its rates to those from Chicago, a considerable portion of its distributing trade.

The desire to interfere in this way with relations which have resulted from a long process of industrial and commercial evolution shows how far even the present fairly conservative Commission might attempt to go in the arbitrary disturbance of basic business conditions. What some future commission might do may well be left to the imagination. Rebating is bad enough, but under conceivable circumstances it might save the country from the worse evil of an inflexible and unwise adjustment of rates. No industrial community will ever fall behind its competitors and no great business will ever become bankrupt because of final refusal to violate unwise laws, but unwise laws may drive out of business the men who hold to the highest standards of morality and put in their places others who will do whatever is essential to success. When England's Parliament attempted to deprive wage earners of the increased wages which the economic conditions brought about by the decimation of the ranks of

labor by the Black Death justified, the law failed and those who paid wages fixed by the market rather than those fixed by statute were not restrained by the argument that any violation of law is immoral. No parliament or congress has ever yet enacted a law that has effectually repealed a natural law of commerce and trade. Labor, merchandise, and transportation will forever sell for what they will bring.

WOULD ADD TO THE INCENTIVE FOR REBATING.

The whole power of the Federal Government and of most drastic laws has not been sufficient up to the present time wholly to eliminate secret deviations from schedules promulgated by the railways. It is not likely to be easier to enforce schedules made and promulgated by an extraneous authority. No law will prevent shippers from offering traffic at less than the legal rates or, when concessions are refused, from withholding it or sending it forward, where possible, by carriers operating on rivers, canals, lakes, or seas, or in adjacent foreign countries. No law will compel railway men to stand idly by while their locomotives rust in the roundhouses or their cars decay upon the side tracks because traffic to employ and fill them is not offered at the rates fixed by the Government. If the existing set of railway men should decline to violate such a mandate and the financial destruction of their properties should ensue the certain and inflexible operation of the natural laws of business would bring in, as their early successors, men who would meet the necessities of the situation. There would be more rebating under the proposed system or under any system which lodged final authority to fix rates for the future in any public body than under the existing system.

IT IS GENERAL RATE MAKING.

I have not hesitated to characterize the pending proposals as seeking to confer rate-making authority upon the Commission, although I well know that the advocates of these measures, including the Commission, object to the use of that term. It is conceded that the proposals now under consideration in Congress, with the exception of those relating to the use of shippers' cars and "industrial" railways, of which measures I shall not speak save in terms of assent, relate solely to the enlargement of the power of the Government over the rate schedules and not to the prevention of the deviations from those schedules which are accomplished by means of rebates. The President urges that the Interstate Commerce Commission be endowed with "the power to revise rates and regulations," or, in other words, to revise and remake the schedules of charges which the railways must observe. The Commission has described (in its Annual Report for 1904) the enlarged power which it seeks as follows:

> What the Commission could do if the authority so defined should be definitely conferred by the Congress is this: After service of complaint upon the carrier or carriers, after full hearing of each carrier and shipper interested, and after careful investigation, a report and opinion would be rendered, and if the decision should be against the carrier an order would be entered directing it to cease and desist from charging the rate complained of and to substitute therefor a rate found, upon the evidence before the Commission, to be reasonable and just.

The only substantial criticism of the foregoing which ought to be made is the use of the singular form "rate," instead of the plural form "rates," in describing the changes in the schedules which the Commission wishes to have power to make. This choice of a word of minimum significance was not intended to mislead anyone and will not mislead anyone, for the Commission declares in the sentence immediately preceding that just quoted that the proposed enlargement of its powers "would confer in substance the same power that was actually exercised by the Commission from the date of its organization up to May, 1897, when the United States Supreme Court held that such power was not expressed in the statute." Now, it happens that in the very case decided by the Supreme Court in May, 1897, the Commission had attempted by a single order to substitute not "a rate," but several thousand rates, which it regarded as "reasonable and just," for several thousand other rates which it had condemned. In fact, in this one order it attempted to compel a complete revision of the charges on all through southbound railway freight originating east of the Mississippi river and north of the Ohio and Potomac rivers and destined to points south of the two last-named rivers and east of the Mississippi river. The Commission regards it as "persistent misrepresentation" to allege that the power sought is that of rate-making, but if this is true the misrepresentation began with the highest court in the land. In deciding the case just referred to the Supreme Court said:

> There is nothing in the act requiring the Commission to proceed singly against each railroad company for each supposed or alleged violation of the act. In this very case the order of the Commission was directed against a score or more of companies and determined the maximum rates on half a dozen classes of freight from Cincinnati and Chicago, respectively, to several named southern points and the territory contiguous thereto, so that if the power exists, as is claimed, there would be no escape from the conclusion that it would be within the discretion of the Commission of its own motion to suggest that the interstate rates on all the roads of the country were unjust and unreasonable, notify the several roads of such opinion, direct a hearing, and upon such a hearing make one general order, reaching to every road and covering every rate. (167 U. S., 508.)

Whatever the Commission could do upon its own motion it could certainly do upon complaint, and no complaint may be dismissed on account of the absence of direct interest on the part of the complainant. It is rather difficult to understand how, in view of the conclusion of the Supreme Court, which has just been quoted, anyone can contend that the proposals now pending would not confer general rate-making power upon the Commission. A distinguished advocate of the proposed legislation told you only the other day that—

> There is a vital difference between clothing a commission with authority to make a specific rate in the stead of one that has been condemned, after full hearing, and clothing it with authority to prepare and publish general rate schedules.[a]

Whether the foregoing generalization is accurate or not is of no consequence in the present discussion. There is no proposal which limits the action of the Commission, under the suggested enlargement of its powers, to a "specific rate." The complaint required may be

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[a] See testimony of Governor A. B. Cummins, of Iowa.

made by a person without a scintilla of interest in the matters complained of, for section 13 of the present law says that—

> No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

And the Esch-Townsend bill bases the proposed enlarged authority "upon complaint duly made under section 13 of the Act to regulate commerce." A complaint may be as broad as the continent and might easily involve the suggestion, as the Supreme Court has said, "that the interstate rates on all the roads of the country were unjust and unreasonable." The Interstate Commerce Commission has repeatedly heard single cases involving thousands of rates and millions of dollars of railway gross receipts. It is either a singular misapprehension or a notable lapse from candor which permits the constant use of the word "rate" instead of the word "rates."

Senator DOLLIVER. Is it your idea that the power to fix rates could not be so narrowed as to exclude the consideration of this territorial question involving port differentials?

Mr. NEWCOMB. I would not like to say that it would be impossible, but I am afraid you would not find it practicable.

Senator DOLLIVER. I notice that Judge Clements, of the Commission, expressly desires to have it narrowed down to the naked question of considering the reasonableness and justice of particular rates complained of by shippers.

Mr. NEWCOMB. Of course the Commission always uses the word rate, but in practice its orders have, almost without exception, related to a large number of rates. In its special report to the Senate, dated May 1, 1905, the Commission says:

> It should be noted that the number of cases by no means measures the extent and variety of the interests involved, since a single case may be brought by a municipal or commercial organization on behalf of all shippers in an important locality and against an entire group of carriers reaching numerous sections and distant points of origin or destination.

The power to initiate railway rates over any railway is exhausted almost as soon as its operation is begun. Thereafter no power anywhere remains except that to revise, remodel and correct the schedules originally adopted or their successors. This power, so far as interstate traffic is concerned, must be exercised subject to Congressional regulation, and this regulation may Constitutionally go so far as to take the rate-making or rate-revising authority away from those who now exercise it and transfer it to Congress and, perhaps, to a commission. Constitutionally this legislative power is, apparently, complete and plenary, except as it is limited by the provisions that—

(*a*) "No person shall be * * * deprived of life, liberty, or property without due process of law" (Art. V of the amendments to the Constitution of the United States); and

(*b*) "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another" (Art. I, sec. 9, Constitution of the United States).

But the fact that the Congress probably possesses the power of railway rate-making, a power conferred before the locomotive was dreamed of, when the greater portion of the present area of the United States was an uninhabited and trackless wilderness, when the

entire population of the country was less than four millions, when it contained but five cities of 10,000 inhabitants and none over 35,000, is, perhaps, not evidence that it should be fully exercised in the day when even the oceans do not mark the boundaries of the nation, when 45,000 locomotives and 210,000 miles of tracks are the measure of railway development, when continental America counts its population as 85,000,000 and one of its seaports contains more people than were covered by its flag when the power was established. As said by the Supreme Court in the case already quoted:

> The importance of the question can not be overestimated. Billions of dollars are invested in railroad properties. Millions of passengers, as well as millions of tons of freight, are moved each year by the railroad companies, and this transportation is carried on by a multitude of corporations working in different parts of the country and subjected to varying and diverse conditions. (167 U. S., 494.)

A far less authoritative contribution to the discussion on this subject says, with truth:

> The power to "revise rates and regulations" is the power generally to make rates. Applied to American interstate railway services, it is greater power than has ever been exercised by any president or prince, by any congress or parliament, by any body of five men, or of 5,000 men. It is power to bind or to loose industry, to enrich or to impoverish both capital and labor, to build up or to tear down communities and commerce.

CONCENTRATING A POWER NOW WIDELY DIFFUSED.

This tremendous power is now neither held nor exercised by any railway officer nor by all of the railway officers of the country together. Although nominally resting with them, it is really shared with those who ship commodities, and finally with the consumers of the articles transported. No check is more real or more effectual than that imposed upon railway officers by commercial competition. Traffic and earnings grow with fairness, not with unfairness. No railway ever prospered while serving unprosperous communities. Producers will not produce and consumers will not consume at localities which are subjected to unjust prejudice and disadvantage by the adjustment of railway rates. The present body of railway rates has grown up out of these conditions and subject to these checks. American industry is intensely dynamic, and the changes are rapid and far-reaching. Day by day these changes require changes in rates, and so long as progress continues the charges must be altered and readjusted. Thousands of railway officers hold daily conferences with tens of thousands of shippers for the purpose of agreeing upon reductions of rates. From April 5, 1887, to the date of its latest (1904) annual report the Interstate Commerce Commission received 2,358,960 rate schedules, and the present annual average is about 100,000. Nearly all of these schedules are issued in order to report reductions. The writer last quoted was perfectly accurate in saying, in regard to the rate-making power:

> Given to the Interstate Commerce Commission it will not have been transferred from the railways, for neither singly nor collectively can they or do they now exercise it. It will have been taken from the public, travelers, shippers, and railways among whom it is now diffused, and concentrated in the hands of a Government which, by that act of concentration, will be made the most powerful and the most centralized of all governments on earth from the earliest dawn of history to the present day.

A FLOOD OF LITIGATION WOULD FOLLOW.

The present interstate-commerce law has probably received about l of the judicial interpretation which it requires. Neither the ommission nor the litigants before it need hereafter go far astray s to the authority which it confers or the remedies which it affords. ighteen years have barely sufficed to bring about this fortunate tuation. It would be a great pity should the hour of its attainment ecome, at least without sufficient reason, substantially that on which gave place to a new law which would require a second period of idicial interpretation. Yet it is beyond the utmost power of states- an or lawyer to devise a statute on so complex and important a ubject as this, a statute proposing to modify and control all of the ontractual relations between interstate railways and their patrons, hich will not require extended and repeated reference to the courts efore its meaning is fully and clearly established.

Again, there are two clauses of the Federal Constitution under hich every rate prescribed by legislative authority can be brought efore the Federal courts. How far the provision against the taking f property without due process of law may be effective to prevent nreasonable reductions of particular rates is only one of the Con- itutional questions which would require extended judicial inquiry. o far the popular theory has been based upon an expression by udge Brewer in the Iowa Railroad Case (Chicago and Northwestern . Peter A. Dey et al., 35 Fed. Rep., 866), decided in the United tates circuit court for the Southern District of Iowa on July 27, 388. Judge Brewer said:

> Coming now to the question of the schedule as presented, I remark that the hedule as a whole must control, and its validity or invalidity does not depend pon the sufficiency or insufficiency of the rates for any few particular subjects transportation.

It is to be remarked that in this case an injunction against the pro- osed legislative schedule was granted, and that the objection before ne court was to an entire schedule rather than to particular items n it. It is possibly unwarranted to assume that if the legislative ttempt were to take up the schedule in detail, and to substitute nremunerative rates for remunerative rates, some way to stop the rocess by judicial action somewhere short of the confiscation point ould not be discovered. And it is here to be remarked that the ecisions indicate that the confiscation point is that of "no compen- ation," not that of unreasonably low compensation. Then, too, every reat city is now a port of the United States. It would be scarcely ossible to issue an order which would not be the subject of litiga- on on this score if the provision against preference does not, in fact, e the hands of Congress on the whole subject of effective rate aking.

RAILWAY RATES ARE NOT EXCESSIVE.

Now, it is by no means a complete answer to a demand for new gislation, even when the proposed laws are experimental and rad- al, to show that they obviously open the door to new evils of nmeasured magnitude. About the best that legislation ever can do to contrive an exchange of old evils for new ones, and, if the old t of evils is serious enough, even a radical and uncertain experiment

may be necessary. It is desirable, therefore, to measure carefully the length and breadth and depth of the evils which are the basis of the demand for further rate legislation.

Two classes of evils are alleged to exist. It is claimed:

(*a*) That railway charges are generally excessive in themselves.

(*b*) That railway charges are so adjusted as to discriminate unjustly between persons, places, and kinds of traffic.

The Chairman of the Interstate Commerce Commission, Hon. Martin A. Knapp, does not believe that there is any ground for the first charge. In his statement before the Senate Committee on Interstate Commerce on March 18, 1898, he said:

> In the first place, as Senator Elkins says, the question of excessive rates—that is to say, railroad charges which in and of themselves are extortionate—is pretty nearly an obsolete question. I would not affirm that there are not such rates; yet, broadly speaking, there are not many such. Those are not the rates of which the public complain. That is not the burden of the complaint.

It is difficult to see how railway rates can be generally excessive unless the earnings of railway property are unduly high. Just what those earnings are and their relation to the capital actually invested thus become important questions.

The total railway capitalization on June 30, 1903, the latest date for which the statistics are available, as reported by the statistician to the Interstate Commerce Commission, was $12,599,990,258, but this aggregate includes $2,318,391,953 in par value of railway securities held in the treasuries of railway companies and thus the basis of other issues of securities. Part of this duplication was offset, however, by the exclusion from the capital account of $864,552,960 of current liabilities. Allowing for these items, the capital account stands as follows:

Railway capitalization.

Stock not owned by railways	$4,357,235,824
Bonds not owned by railways	4,906,661,409
Miscellaneous obligations	640,704,135
Income bonds	234,016,821
Equipment trust obligations	142,980,116
Current liabilities	864,552,960
Total	$11,146,151,265

How nearly the quoted amount represents actual investment in railway property is a pertinent inquiry. There is a great deal of loose talk concerning overcapitalization, much of which is merely the repetition of estimates which in the rapid progress of the last decade have lost their last shred of intelligent basis. The general policy of paying for the improvements necessary to keep their properties up to the state of efficiency essential to meet modern conditions out of earnings and making no capital charge therefor has, it is believed, destroyed the last vestige of "water" in the capitalization of the American railway system as an whole.

Senator NEWLANDS. You mean putting money back out of earnings?

Mr. NEWCOMB. Yes, sir.

Senator NEWLANDS. You say "putting money back out of earnings that could have been used for declaring dividends"——

Mr. NEWCOMB. I say that has done away with all water that there may have been in the capitalization of the American railway system as an whole.

Senator CLAPP. How would it do away with watering stock?

Mr. NEWCOMB. Because the capitalization now represents their true valuation.

Senator CLAPP. If they had issued the stock at par, to pay for the improvement the stock would still have been watered, would it not?

Mr. NEWCOMB. Perhaps not; but suppose there was water before that, would not that remain?

Senator CLAPP. Does not that remain now?

Mr. NEWCOMB. No; I think it has been wiped out by making the value of the property equal to the capitalization, so that there is value for every dollar of outstanding securities.

Senator CLAPP. You mean the improvements would eliminate the watered character of the stock?

Mr. NEWCOMB. Yes, sir.

Senator NEWLANDS. But you are speaking of railroads as an whole.

Mr. NEWCOMB. There are some systems, I presume, for which that statement would not be true. They are offset, however, by systems that are worth a great deal more than their capitalization. I am much inclined to think that the system, as an whole, is worth more than its aggregate capitalization.

The same report states that $196,728,176 was paid in dividends on railway stock and $283,953,124 as interest on funded debt, but here, again, there is serious duplication, due to the inclusion of payments from one railway corporation to another, which must be excluded before the real returns to investors can be determined. Turning, however, to the "combined income account of the railways of the United States, considered as a system," on page 74 of the Report for 1903, it appears that the actual net payments on account of capital were as follows:

Payments on account of capital.

Net interest on funded debt	$268,830,564
Interest on current liabilities	9,060,645
Net dividends	166,176,586
Total	$444,067,795

This return amounts to 3.98 per cent on the capital invested and this was for the very prosperous year 1903.

Senator NEWLANDS. Dividends paid?

Mr. NEWCOMB. Dividends and interest; the dividends are less. The rate is raised by the fact that the percentage of interest on funded debt is a little higher than the percentage of dividends on stock.

Senator NEWLANDS. Let me understand that. Your first claim is that while the stock of these railroad companies may in some instances have been watered, that is to say, stock issued without any equivalent either in cash or property, yet that the railroads themselves, by applying part of their profits to betterments and exten-

sions instead of to dividends, have put into the value of the railroads sufficient to make that value equal the face value of the stock.

Mr. NEWCOMB. That is what I mean. They have put back the discount they had to give on their securities.

Senator NEWLANDS. We will assume that a railroad has made enough to earn, say, 15 per cent in dividends; that it has declared a reasonable dividend, say, of 6 per cent, and then has put the other 9 per cent into betterments and extensions. Would you regard that as relieving the corporation of its water?

Mr. NEWCOMB. In your supposed case it may not have been relieved of water; but it might have been a very desirable arrangement. I think you will find, however, that in most cases this putting back of money into the property has antedated the payment of dividends, always of anything like 6 per cent dividends. It is very rare that 6 per cent dividends are paid on any American railroad stocks.

Senator NEWLANDS. Six per cent upon the face value of the stock, yes; but 6 per cent is not uncommon upon the real money that has been put into the business.

Mr. NEWCOMB. But I am inclined to think that if I go into an enterprise and have to discount my note in order to secure capital that is an expense of the enterprise which I am entitled to get back. I am not at all sure that railways are under any obligations to so expend their earnings, but as a matter of fact they have done it.

Senator NEWLANDS. But the assumption of the Supreme Court is that in the regulation of rates you must have in view the value of the property and a fair return, in the shape of interest to the stockholders, upon the actual investment, I imagine. If they get more than the going rate of interest and apply that surplus to betterments and extensions, would you regard that as increasing the capitalization of the road?

Mr. NEWCOMB. I am not at all sure that the going rate of interest would be looked upon by the Supreme Court as a fair return where there had not been any interest for a long period or where the risk had been very great. The amount that must be received from investments is determined by the risk as well as by the rate on other investments.

Senator NEWLANDS. We can conceive a case where the earnings of a road amounted to more than 10 or 15 per cent upon the actual money invested, and there have been cases of reorganizations where two or three times original par has been issued in stock for the original shares.

Mr. NEWCOMB. I do not know of any such case, Senator.

Senator NEWLANDS. Take the case of the Northern Pacific and the Great Northern. They bought the Chicago, Burlington and Quincy road. The par of that stock, I believe, was 100. They bought that stock and issued bonds against it for $200 a share.

Mr. NEWCOMB. They issued a 4 per cent bond at $200. The revenue on that bond is just 1 per cent on the former capitalization, I believe, higher than the former dividends. Seven per cent dividends were being paid on the stock, and the bonds now pay 8 per cent. The dividend rate was just about to be raised to 8 per cent.

Senator KEAN. They have been earning 8 per cent for several years.

Mr. NEWCOMB. Yes, sir.

Senator NEWLANDS. But that 8 per cent ran the price up to $180, did it not?

Mr. NEWCOMB. I think before the movement for securing the control of that property began, the shares were selling for something like $155, and the price went up to $180, or perhaps $190, during the contest.

Senator NEWLANDS. So that the demand created for that stock by that operation increased its value on the market 25 or 30 points, and then bonds were issued for even an additional increase.

Mr. NEWCOMB. As I remember the last quotations, they were about 193 or 194. I do not pay especial attention to these matters.

Senator NEWLANDS. Bonds were issued upon the basis of 200. The original stock in that case had a par value of 100, had it not?

Mr. NEWCOMB. Yes, sir. I have never attached great importance to this question of capitalization. The question to the public, if it has any interest whatever in the matter, must be, how much is going to be paid out on these securities. So far as the public has any interest, its question is what interest is going to be paid. If the total interest charge is not increased, I am sure there can be no injury. I do think that money capitalization has nothing at all to do with the charges that are made.

Senator NEWLANDS. You mean charges that are made by the roads?

Mr. NEWCOMB. Yes. I am quite convinced by President Hadley's argument on that point, that there is no influence through capitalization upon rates. I think that is a business question.

Senator NEWLANDS. Suppose the capital stock has been doubled without additional value being given, there would be an opportunity then to so adjust the rates as to earn 4 or 5 per cent upon the capital.

Mr. NEWCOMB. Not an effective opportunity in that direction. I think that is absolutely impossible.

Senator NEWLANDS. Would it not be the natural inclination on the part of the railroad?

Mr. NEWCOMB. Undoubtedly it has a very natural inclination to earn all it can and to distribute all it dares to distribute, but they know very well that they can not distribute any very large dividends. That is out of the question.

Senator CULLOM. Did you get through your main statement, Mr. Newcomb?

Mr. NEWCOMB. I am sorry to say I did not.

Senator NEWLANDS. Then I will not pursue this inquiry further.

Mr. NEWCOMB. It appears, therefore, that $11,146,151,265 of railway capital earned for its owners $444,067,795 or 3.98 per cent per annum in the exceedingly prosperous year 1903. Surely this is not to be regarded as a high return, especially in view of the fact that much of the capital included had previously been for many years utterly unremunerative. Even in 1903 no less than 43.94 per cent of the outstanding railway stock paid no dividends, and those who held a goodly portion of the dividend-paying stock of that year had to average their receipts over many previous years in which they had received nothing. Even as late as 1897 the proportion of nonpaying stock was 70.10 per cent of the total. The following statement

shows these facts for each year covered by the reports of the Interstate Commerce Commission:

Year.	Amount of stock not paying dividends.	Stock paying dividends.	Amount of stock paying dividends.	Amount paid in dividends.[a]	Average rate paid on dividend-paying stock.
		Per cent.			*Per cent.*
1903	$2,704,821,163	56.06	$3,450,737,869	$196,728,176	5.70
1902	2,486,556,614	55.40	3,337,644,681	185,391,055	5.55
1901	2,828,991,025	51.27	2,977,575,179	150,735,784	[illegible]
1900	3,176,609,608	45.66	2,668,960,805	139,697,979	5.23
1899	3,275,509,181	40.61	2,239,702,545	111,009,822	4.98
1898	3,570,155,239	33.74	1,818,113,082	96,152,899	5.29
1897	3,761,092,277	29.90	1,603,549,978	87,110,599	5.43
1896	3,607,503,194	29.83	1,559,024,975	87,003,371	5.62
1895	3,475,640,203	29.94	1,485,618,453	85,287,543	5.74
1894	3,006,150,084	28.57	1,767,925,565	95,515,226	5.40
1893	2,859,334,572	38.76	1,809,690,946	100,929,885	5.58
1892	2,807,403,326	39.40	1,825,705,437	97,614,745	5.35
1891	2,954,258,391	40.38	1,798,390,696	91,117,919	5.07
1890	2,811,526,562	36.24	1,598,131,933	87,071,013	5.45
1889	2,621,439,792	38.33	1,629,750,927	82,110,198	5.04
1888	2,374,200,906	38.56	1,490,267,149	80,238,065	5.38

[a] Large portions of the aggregates shown in this column were paid to railway corporations; the actual totals paid to private investors were much lower than those shown.

Even in 1903 the dividend rate on all of the stock outstanding was but 3.20 per cent and that on stock in private hands but 3.81 per cent. The data available do not warrant a precisely comparable study of funded debt and its interest. The last column in the table which follows is based upon a comparison of the total interest accrued with the total funded debt outstanding, instead of, as in the case of capital and dividends, that portion on which something was paid as return to investors.

Funded debt and interest.

Year.	Amount of funded debt not paying interest.[a]	Funded debt paying interest.[a]	Amount of funded debt paying interest.[a]	Interest accrued during year.[b]	Average rate of interest on all funded debt outstanding.[b]
		Per cent.			*Per cent.*
1903	$272,788,421	95.67	$6,028,602,689	$383,963,124	4.41
1902	294,175,243	95.11	5,728,598,001	274,421,955	4.49
1901	361,905,203	93.77	5,451,559,961	252,094,838	4.46
1900	378,937,806	93.22	5,200,288,241	252,949,616	4.48
1899	572,410,746	89.55	4,904,474,088	251,158,087	4.85
1898	852,402,622	84.18	4,556,561,977	246,126,691	4.53
1897	867,950,840	83.41	4,362,528,212	247,880,230	4.70
1896	890,559,442	83.74	4,429,474,129	249,624,177	4.67
1895	890,561,460	83.29	4,439,018,786	252,512,920	4.69
1894	914,757,607	82.71	4,377,855,208	252,770,523	4.72
1893	743,015,193	85.61	4,419,975,407	250,176,887	4.79
1892	777,719,420	84.44	4,220,165,095	240,074,895	4.75

[a] Exclusive of equipment trust obligations.
[b] Including interest on equipment trust obligations.

The foregoing shows that the rate of payments on account of bonded indebtedness has considerably decreased during the last twelve years, and that the average is now less than 4½ per cent.

GOVERNOR CUMMINS.

It is worth while to notice very briefly a recent argument that was presented to this committee by Governor Cummins which, in the words of its distinguished author, was intended "to show you that the railways are not above criticism in the aggregate revenue which they receive for their service, notwithstanding the fact that the rate per ton per mile is less here than elsewhere."

To establish the foregoing, with regard to the railway system of the United States, its author ignored taxes amounting to $56,474,106; assumed a ratio of operating expenses to operating earnings of 65 per cent, although the report from which he took his data showed that the actual average was 67.75 per cent, and added to the real difference between gross receipts and operating expenses, which difference he designated as "net income," a largely fictitious bookkeeping entry of $100,786,684, representing income from sources other than operation. The last-mentioned item is really to a very large extent a duplication of amounts appearing in the aggregate for gross receipts. Thus it includes the dividends received by the New York Central and Hudson River Railroad on the shares which it owns in the Lake Shore and Michigan Southern; those received by the Pennsylvania Railroad from its holdings in the Pennsylvania Company, Baltimore and Ohio, and other companies, and many similar payments. Merely allowing for these palpable errors reduces the apparent aggregate capitalization, on a 6 per cent basis, from $13,151,808,689, as estimated by Governor Cummins, to $9,629,612,783, and the average per mile from his estimate of $62,927 to $46,074. Governor Cummins failed to bring to your notice the significant fact that the report from which he quoted shows that increased wages and prices have so gained upon railway revenue that what he calls "net income" was lower in 1904 than 1903. As a matter of fact, the report shows that while average gross receipts per mile of line increased $152 from 1903 to 1904, operating expenses at the same time increased $250 per mile, thus making a net loss of $98 per mile, or, for 209,002 miles of line, $20,482,196. It is not because this decline is not going on in Governor Cummins's own neighborhood that it has escaped his attention. As shown by the attestation of the secretary of the board, the board of railroad commissioners of Iowa submitted its report for the fiscal year 1904 to Governor Cummins on December 5, 1904. This report shows that the "net earnings" of the railroads of Iowa were less in 1904 than in any one of the six years from 1898 to 1903, inclusive. The "net earnings" per mile of line of the Iowa railways in 1904 were 0.84 per cent less than in 1896, 19.56 per cent less than in 1898, 15.71 per cent less than in 1900, 24.79 per cent less than in 1902, and 11.60 per cent less than in 1903. During the twenty-seven years covered by the reports of the Iowa commission, the net railway earnings of that State have exceeded those of 1904 in every year except 1888, 1889, 1892, 1893, 1894, 1895, and 1897. The Iowa commission does not deduct taxes before stating what it terms "net earnings." If this is done, it will be seen that while the net receipts over the cost of opera-

tion have been going downward taxation has been moving upward. The following table shows these facts for each of the last ten years:

Year.	Difference between gross receipts and operating expenses (report of Iowa commission, 1904, p. 9)	Railway taxes collected in Iowa (successive reports of Iowa commission.	Real net earnings.	
			Total.	Per mile of line.
1895	$11,109,838.02	$1,357,458.00	$9,752,395.05	$1,149.19
1896	13,106,439.96	1,370,256.14	11,735,893.82	1,381.43
1897	12,932,788.66	1,367,144.18	11,565,644.53	1,364.09
1898	16,135,564.33	1,399,090.79	14,736,473.54	1,736.94
1899	16,996,886.76	1,415,465.49	15,570,921.27	1,828.75
1900	16,665,146.79	1,467,725.54	15,197,421.25	1,657.03
1901	17,314,064.85	1,521,553.42	15,793,111.43	1,698.40
1902	19,294,045.87	1,609,751.90	17,684,293.97	1,864.43
1903	16,433,235.49	1,688,368.34	14,744,872.15	1,552.75
1904	14,168,034.25	2,072,618.27	12,095,415.98	1,318.45

The foregoing shows that after paying for labor, supplies, general operating expenses, and taxes, the railways earned less per mile in 1904 than in any year subsequent to the extremely bad year 1895; less than in the very lean fiscal years 1896, 1897, and 1898.

In this connection I should like to print the first ten pages of the annual report for the fiscal year 1904 of the railroad and warehouse commission of Illinois.

This portion of the report reads as follows:

To His Excellency RICHARD YATES,
Governor of Illinois.

SIR: In accordance with the provisions of the law creating the railroad and warehouse commission of this State and defining its duties, we have the honor of transmitting to you herewith the thirty-fourth annual report of said commission and the fourth annual report of the present board.

The State of Illinois still stands at the head of the list with the largest mileage of main-track steam railroads of any State in the Union, and for the first time in many years there is not a mile of steam railroad within its borders in the hands of a receiver. The prosperity of the whole country is still reflected in the condition of the transportation companies of our State. Year after year it is our pleasure to report added millions of invested capital in new lines, improvements of a marked and substantial character in the physical condition of the older tracks, large additions to their operating capacity in the building of second, third, and fourth main tracks, and the enterprise of the management of our railroads in the care and comfort of the traveling public, by placing upon their lines the very latest improvements in car construction, so that now we have upon the lines in Illinois passenger trains unsurpassed by any trains in this or any other country. Added to this, the more important of our railroads are installing additional safeguards in the operation of their properties by erecting block signals to govern the movement of the traffic, and yet despite of all that has been done, the number of casualties is still far too great

Our statistics show twenty-five (25) passengers killed and four hundred and sixty-two (462) injured, or one killed for every 2,125,927 and one injured in every 115,039. The proportion of killed and injured among the employees is altogether too large, viz: Killed, 326; injured, 2,800; or one killed in every 324, and one injured in every 38.

The extension of the block system will in all probability reduce very materially the casualties among passengers, and a more rigid inspection of automatic couplers and other safety appliances would go far to reduce the casualties among the employees. And still the words of the Rev. Henry Ward Beecher, as they were in the year 1878, when, addressing a gathering of railroad conductors in the Tabernacle in Brooklyn, N. Y., and complimenting them upon the care and fidelity with which they performed their duty, he said "that the statistics of this country proved that it was safer to travel on the railroads of the United States than it was to stay at home."

NEW LEGISLATION.

The statutes of the State regarding railroads are practically the same as they were in the year 1871, when this commission was created. Very few amendments have been added. The conditions surrounding the operation of railroads have materially changed, and this commission have suggested from time to time such changes and additions to the present laws as their experience has deemed desirable. The railroad companies themselves have admitted the necessity for additional legislation along these lines, and it would be pertinent here to reprint the recommendations to the executive contained in the reports of the commission for the years 1900, 1901, and 1903, which, in the opinion of the board, are just as necessary to-day as when the recommendations were made.

The commission in 1900 report:

"We desire to call your attention to the rapid construction of new lines of road in this State for the purpose of carrying freight, mail, and passengers, the motive power of which is electricity. Your board has held that where a railroad has been constructed under the general law of the State pertaining to 'railroads,' they should enforce the laws and exercise such authority over them as the statutes provide, regardless of the character of the motive power. This position has been questioned and is now being questioned in the courts. We most heartily recommend that the statutes be amended so as to give the railroad and warehouse commission the same authority over electric lines that it has over steam railroads outside of the corporate limits of cities, and where a line connects cities and counties outside of the corporate limits when the line is a continuous road and under the control or management of the same company. Such legislation will avoid much litigation and settle mooted questions now in court.

CROSSINGS.

"Petitions have been filed with this commission asking them to name the kind of crossings that should be put in where the street railways cross the steam railroads within the corporate limits of cities. The steam railroads contend that all crossings known as 'jump crossings,' used by many street railways, are dangerous to life and property. The steam railroad companies desire the commission to require the street railways to use 'channel' crossings, or, in other words, a crossing substantially constructed, such as steam railroad companies use in crossing the main tracks of each other.

"It is contended by the street railway companies that under the statutes we have no such authority. This, together with the further fact that so many lives of the citizens of this State have been lost by the trains on steam railroads running into street cars where the tracks of street railways cross the main track of steam lines, leads us to recommend in the interests of public safety that this board be given full authority by law to determine the character of the crossing to be used where the tracks of street railways cross the steam railroads within the corporate limits of cities, as well as without, and that the same authority be given this commission in regard to such crossings as it now has where the steam railroad companies seek to cross the main track of another railroad; and that full power be given this commission to order in interlocking devices and other such safety appliances as may, in the opinion of the commission, be necessary to protect life and property at such crossings."

The commission in 1901 report:

"There have been a great many accidents at grade highway crossings during the present year, as will be seen by this report. Having this in view, the last board recommended to the legislature that a bill should be passed empowering this commission to direct all railroad companies, when in their judgment they thought proper, to place electric bells at these crossings, and we desire to repeat what has been said by the former commission, viz: 'We would respectfully recommend that a law be enacted which will require the railroads to place electric bells at these crossings to give warning to those who may approach the crossing of the coming of trains; that these bells shall be placed at such crossings as in the judgment of the commission it shall be necessary, and where, in the judgment of the commission, such bells are not sufficient, that the law shall provide that such other devices shall be used as shall in the discretion of the board be practicable.'"

The commission in 1903 report:

"The commission would like to invite your especial attention to several matters of new legislation which their experience during the last year seems to be

desirable. The State is just beginning to learn the advantage to be derived from the building of interurban electric railways and capital is not slow to see a source of profitable investment, consequently we have a large increase of mileage of this class of railways during the present year and enough more projected to nearly double the mileage at present operated. These roads are, although in a different way, doing identically the same class of business as the steam railroads, and the laws of the State applicable to the steam railroads ought to be extended to apply also to the electric lines. These roads are seeking at innumerable points a crossing of steam railroads at grade, and as grade crossings have been decided in our State and many other States to be a menace to the life and property of our citizens, it would seem to be right that the provisions of our grade-crossing statute and protection-to-crossing statute be extended to cover the interurban roads, which this commission has proceeded to do in all cases brought before it.

"Another matter deemed necessary to call your attention to particularly is in the increase of the number of persons killed and injured on the railroads of our State, and in this connection it might not be out of place to quote from the last report of the Interstate Commerce Commission as to the desirability of some more adequate means of controlling the movement of trains upon our railroads, more especially as within a very recent date we have experienced a very serious accident in our own State from the same cause."

To show you what proportions the electric railroads have assumed, we desire to call your attention to the comparison of the condition last year and at the date of this report. In 1903 this class of roads had 365.32 miles of main line and branches in Illinois; in 1904 they had 586.42 miles, a gain for the year of 221.10 miles. In 1903 they had 553.34 miles of all classes of track in Illinois; in 1904 they have 794.06 miles, a gain of 241.72 miles, with quite a large number of miles in process of construction, and also quite a number of new companies incorporated.

THE REPORT AND WHAT IT CONTAINS.

You will find in our report comparative tables, making a comparison of all the details of the railroad business, both steam and electric, between the years 1903 and 1904.

A statement of the financial affairs of the commission, viz: The appropriation made for its maintenance and work.

The orders and opinions of the commission, in cases brought before it for adjudication, and it might be well to state here that a very large percentage of the cases adjusted have been presented merely by letter or orally, and in nearly all such cases an amicable settlement has been reached by correspondence or the personal intervention of the commissioners.

The report of the consulting engineer relative to the physical condition of the railroads, the protection of crossings by interlocking devices, etc.

A statement of new railroads incorporated during the year.

Statistical tables of both steam and electric railroads.

A list of the names of the officers and directors of the roads operating in our State.

The annual report of the grain inspection departments at Chicago and East St. Louis, both under the control and direction of this commission.

The statute of the State of Illinois relating specially to railroads and the inspection of grain and public warehouses.

In addition to this we have reproduced photographic views of

some of the most prominent of the new and interesting features of railroad improvements completed during the year.

STEAM RAILROADS, MILEAGE.

Table I.—The mileage (main line) of steam railroads of the State of Illinois is 11,529.09 miles, being an increase of 300.04 miles during the last year. Additional main track, 2,052.47 miles, an increase of 63.57 miles; yard tracks and sidings, 5,099.05, a decrease of 28.53 miles, making a grand total of mileage of tracks of all kinds, 19,021 miles, with a gain during the year covered by this report of 510.03 miles.

RAILROAD CAPITAL.

Table II.—The total capital of all corporations owning and operating railroads in the State of Illinois (steam railroads) reported to this commission at the close of this year ending June 30, 1904, was $4,240,510,391, making an increase for the year of $300,117,137. This is a much greater increase than for the two previous years, and is accounted for by the increased mileage, betterments of the physical conditions of the older lines, and increased equipment of all kinds, for both freight and passenger service.

B.

The total railway capital per mile of steam railroads for the year ending June 30, 1904, was $61,475. This shows an increase for the year of $3,153 per mile of road, and is accounted for as indicated above.

INCOME ACCOUNT, WHOLE LINE.

A.

Table III.—The gross earnings from operation of all steam railroads reporting to this commission for the whole line operated both within and without the State for the year ending June 30, 1904, is $723,588,657, which is an increase of gross earnings over the fiscal year of 1903 of $30,505,621. The operating expenses were $504,723,811, which is an increase over the operating expenses of the previous year $41,399,739. The total income from operation of steam railroads for the year ending June 30, 1904, was $266,008,810, which is a decrease from the previous year of $8,045,774. The net income for the year 1904 is $102,333,304, which is also a decrease from the previous year of $9,049,454.

DIVIDENDS PAID.

B.

The dividends paid by the corporations operating steam railroads within the State of Illinois for the year ending June 30, 1904, was $76,654,675, which is a decrease over the dividends paid during the previous year of $290,202.

ASSETS AND LIABILITIES.

Table IV.—The total assets of all steam railroads in the State of Illinois for the year ending June 30, 1904, was $4,909,528,921, which is an increase for the year of $269,144,386.

The total amount of liabilities for the year ending June 30, 1904, was $4,692,153,322, which is an increase over the previous year of $247,868,721. The figures here given show an increase of net surplus of assets over liabilities of $21,375,665, or a total of net surplus over liabilities of $217,375,599.

INCOME IN ILLINOIS—PASSENGER AND FREIGHT SERVICE.

Table V.—The total mileage from operation of steam railroads in the State of Illinois for the year ending June 30, 1904, was $139,749,392, which is an increase over the previous year of $6,936,858. The total amount of income from passenger service, including mails and express, for the year ending June 30, 1904, was $34,280,529. The total from freight service was $88,722,088 and from other unclassified earnings was $10,089,548.

EXPENDITURES IN ILLINOIS.

Table VI.—The total expenditures of steam railroads in the State of Illinois for maintenance of way and structures, maintenance of equipment, conducting of transportation and general expenses and unclassified expenses for the year ending June 30, 1904 amounted to $122,852,887, which is an increase over the total expenses of the previous year of $7,192,077.

PASSENGER TRAFFIC—IN ILLINOIS.

Table VII.—The total number of passengers carried earning revenue in the State of Illinois for the pear ending June 30, 1901, was 53,148,198. The average distance carried was 26.7 miles.

The average amount received from each passenger was $0.51, and the amount per mile of line earned by passenger service was $2,923, which is an increase of passenger earnings per mile over the previous year of $194.

FREIGHT TRAFFIC—IN ILLINOIS.

The number of tons of freight carried earning revenue during the year ending June 30, 1904, was 122,002,531. The average distance haul of 1 ton in miles was 101.7 miles. The average amount received for each ton of freight was $0.76. The freight earnings per mile of road was $7,386. The gross earnings from operation per mile was $10,986. The operating expenses per mile were $7,608 and the net earnings per mile of road were $3,378. This shows an increase of 2,581,375 tons of freight hauled. The average distance haul of 1 ton is 2.7 miles. The average amount received for each ton of freight was increased $0.01. The freight earnings per mile of road

was increased $194. The gross earnings from operation per mile of road was increased $444. The operating expenses per mile was increased $631 and the net earnings per mile of road was decreased $187.

FREIGHT TONNAGE—IN ILLINOIS.

Table VIII.—This is a tabulated statement of freight originating in this State and received from connecting lines and while it shows a slight increase in most of the classes, yet in manufactures, miscellaneous and unclassified tonnage there is shown a decrease for the year of 2,669,357 tons.

RAILROAD EMPLOYEES—IN ILLINOIS.

Table IX.—The number of persons, including officers, employed on steam railroads in the State of Illinois, for the year ending June 30, 1904, was 105,790. This is an increase of 2,405 over the year 1903. There was paid out in compensation to said officers and employees during the year ending June 30, 1904, a total of $70,810,600.69, which was an increase of $7,135,973.25 over the amount paid the previous year.

SERVICES.

Table X.—This table shows that the highest average salary is paid to the general officers which is $15.87 per day and is a decrease from last year and the lowest average salary is paid to track men, which is $1.40 per day. The average rate per day for all employees shows an increase with but two exceptions. The average rate per day for all employees, including general officers, for the year 1904 is $2.12.

DESCRIPTION OF EQUIPMENT—WHOLE LINE.

Table XI.—This table includes a detailed description of equipment in use on the entire line of all the railroads reporting to this commission and doing business in the State of Illinois.

The total number of locomotives in passenger service for the year ending June 30, 1904, was 3,744 and the total number in freight service was 10,427 and in switching service 3,173, making a total of 17,344 locomotives. The number fitted with train brake was 17,152 and the number fitted with automatic coupler was 17,235. This shows a total increase in the number of locomotives of 2,054 over the previous year.

The total number of cars in the passenger service for the year ending June 30, 1904, was 12,232, the number in freight service was 655,692 and the number in company's service was 24,352 making a total of 692,276 cars in use. The number fitted with train brake was 564,546 and the number fitted with automatic couplers was 687,728. This shows a total increase in the number of cars of 48,906 of over the previous year.

RAILS, BALLAST AND BRIDGES AND CHARACTERISTICS OF ROAD.

Table XII.—Rails—The number of miles of main line and branches in the State of Illinois for the year ending June 30, 1904, laid with iron rails, was 17.59. The number of miles of main line and branches laid with steel rails, was 11,529.09.

During the year there was 114,564.70 tons of new steel rails laid and 5,290,847 new ties laid in the State of Illinois. The total number of miles of road unfenced was 1,781.75.

The total number of stations on the railroads in Illinois was 3,386, which is an increase of 452 stations opened within the last year.

Ballast—There are 1,416.95 miles of stone ballast, a decrease of a few miles in each of a number of roads from last year; 6,003.52 miles of gravel ballast, 1,621.94 miles of cinder ballast, 150.23 miles of slag ballast, 111.06 miles of gumbo ballast, 403.29 miles of chatts, 195.49 miles of sand, and 1,606.61 miles of earth.

Bridges—There are 679 masonry bridges, 786 iron bridges, 1,542 steel bridges, 148 wooden bridges and 41 combination bridges. The aggregate length of all bridges is 234,947.0 feet. There are 7,680 pile and frame trestles and 15 iron and steel trestles, with an aggregate length of 653,163.2 feet.

RAILROAD CROSSINGS.

There are now 156 overhead railroad crossings, an increase of 16 over the previous year. Three hundred and fifty-nine overhead highway crossings, and 614 under highway crossings. There are 525 grade crossings of steam railroads with 1,410 crossing frogs. This is an increase for the past year of 9 crossings and 219 crossing frogs. There are 400 grade crossings of steam and electric railways with 1,385 crossing frogs. There is an increase for the past year of 9 crossings and 44 crossing frogs. There are also 14,648 grade crossings of highways and streets by steam railroads. This is an increase of 44 crossings during the past year. In view of the number of persons killed and injured at grade highway crossings annually, viz: year 1903, killed 112, injured 144; year 1904, killed 114, injured 141; we desire to call your especial attention to the recommendations of this commission in its report for the year 1901, which is repeated in our report for this year.

CONSUMPTION OF FUEL.

Table XIII.—There has been consumed in the passenger service by the steam railroads in the State of Illinois for the year ending June 30, 1904, 1,613,454 tons of fuel in running 32,994,380 miles, being an average of 97.80 pounds per mile.

There has been consumed in the freight service 4,123,137 tons in running 43,641,017 miles, an average of 188.97 pounds per mile. There has been consumed for all purposes, including passenger, freight, switching, construction and unclassified service, a total of 7,358,641 tons of fuel in running 111,167,031 miles, being an average consumption of 133.59 pounds per mile.

ACCIDENTS IN ILLINOIS.

Table XIV.—The total number of passengers killed by steam railroads in the State of Illinois during the year ending June 30, 1904, was 25, a decrease of 6 from the previous year. The number of passengers injured was 462, which is an increase of 105 over the previous year. The total number of employees killed was 326, which is an increase of 44 over the previous year. The total number of employees injured was 2,800, which is an increase of 163 over the previous year. The total number of other people killed was 513, which is a decrease of 48 from the previous year; and the total number of other people injured was 462, which was a decrease of 106 from the previous year.

B.

Shows a classification of the causes of death and injury.

TAXES.

Table XV.—The total amount of taxes paid by corporations owning and operating steam railroads in the State of Illinois for the year ending June 30, 1904, was $4,945,988.70, which was an increase over the previous year of $219,731.02.

* * * * * * *

Yours, very respectfully,

JAMES S. NEVILLE, *Chairman*,
ARTHUR L. FRENCH,
ISAAC L. ELLWOOD,
Commissioners.
WM. KILPATRICK, *Secretary.*

WHO OWN THE RAILWAYS.

Small as are the percentages of return upon railway investments in general there may be those who, hastily assuming that this class of property belongs to a limited number of very wealthy persons, would willingly see the average rates still further reduced. It is no doubt a fact that the progressive concentration of railway control under a relatively few great corporations and closely allied financial interests has been confused, in the popular mind, with an actual concentration of ownership. In other words, multitudes of otherwise intelligent people are so misled by the existence of the artificial, State-created entities known as "corporations," that they fail to observe, in the background, the millions of natural persons who are the real owners of the corporate properties. I have recently made a somewhat hasty and incomplete investigation of the ownership of railroad property and have come into possession of statistics of unquestionable accuracy which serve in some degree at least to indicate the wide diffusion of the actual beneficial interest in the railways of the country. A

brief memorandum of the results of the investigation may do something to dispel the erroneous impression that railroad ownership is vested in a small group of the very rich.

THE DISTRIBUTION OF STOCK.

As my own inquiries have dealt principally with the ownership of railroad bonds, it may be well, before stating the facts which they have elicited, to recapitulate some of the data concerning stock ownership which were made public in an article by Mr. Slasson Thompson, in the World of To-day for January, 1904.

Mr. Thompson ascertained that 43 railroad corporations, controlling 115,641 miles of railroad, or less than 57 per cent of the mileage of the country, had registered shareholders to the number of 225,037. As the share capital of these railroads aggregated $3,034,495,046, it follows that the average holding of each stockholder was but $13,484. This amount does not indicate much in the way of concentration of ownership, but it does overstate the actual concentration, for anyone familiar with the real facts knows that many of the 225,037 shareholders of record are banking institutions (mostly savings banks), trust companies, insurance companies, educational institutions, executors and administrators of estates, and other institutions or individuals whose ownership is of a fiduciary or quasi fiduciary character.

SMALL HOLDINGS MAKE A MAJORITY.

In addition, Mr. Thompson discovered that a single railroad, the Illinois Central, had 9,123 shareholders, of whom 7,174 owned less than 100 shares each, their average holding being less than 23 shares. Mr. Thompson's table relating to this company merits reproduction. It is as follows:

Illinois Central Railroad Company—Distribution of shares as registered on the company's books at the close of business September 29, 1903.

Holdings.	Number of stockholders.	Shares of $100 each held.	Per cent of entire capital.	Average holdings in dollars.
1 to 99 shares	7,174	164,989	17.36	$2,299.83
100 shares even	391	39,100	4.11	10,000.00
101 to 499 shares	1,281	270,581	28.47	21,123.64
500 shares even	38	19,000	2.00	50,000.00
Total of small holdings	8,884	493,670	51.94	5,556.84
501 shares and upward	239	456,714	48.06	191,093.72
Total of all holdings	9,123	950,384	100.00	10,417.45

Mr. Thompson properly directed attention to the fact that the average annual income of the 8,884 small holders from a 6 per cent dividend was but $333.41, while the largest holders among them would receive but $3,000 each yearly from their investments.

The latest data on the subject of stockholdings are contained in the report of the Interstate Commerce Commission submitted on February 24, 1905, in response to a resolution of the Senate. This report

(Senate Doc. No. 188, 58th Cong., 3d sess.) shows that there are no less than 327,851 shareholders of record of American railway corporations. As this includes many fiduciary holders who represent large bodies of individuals and some holding companies whose own shares are widely distributed, the real aggregate is doubtless greater.

WHAT DEPOSITORS IN SAVINGS BANKS OWN.

My own investigations have been confined to the holdings of institutions which may properly be described as acting as trustees for large masses of the people. Prominent among institutions of this class are the savings banks of the country. Banks of this class are before all else the depositories of the poor and the moderately well-to-do. The millions of patrons who intrust to them their scanty accumulations can not directly avail themselves of the investment opportunities open to their wealthier neighbors, nor can they afford to assume the risks which are implied by promises of high returns. What they seek is safety and stability with the highest return compatible with both. The savings banks thus become an agency for the concentration of the capital of hosts of the smallest investors and the utilization of the aggregates in ways not directly open to any of them separately. Savings banks have invested very largely in railroad securities, as is shown by the following table, in which statistics compiled from the latest reports of the banking departments of the six States named are presented:

Savings institutions.

State.	Number of depositors.	Total deposits.	Railroad (steam) securities owned.[a]	Per cent of deposits.
New York	2,365,583	$1,131,281,943	$177,444,223	15.69
New Jersey	242,605	76,316,793	20,334,178	26.64
New Hampshire	159,956	66,140,710	23,746,521	18.64
Massachusetts	1,723,015	608,415,409	113,397,287	35.90
Connecticut	474,548	220,597,198	82,265,024	37.29
Maine	209,011	75,107,203	25,166,853	25.51
Total	5,174,718	2,177,859,256	$442,354,086	20.31

[a] Book values.

As the public records and reports of the States other than those shown above do not disclose the facts desired, I sent a large number of inquiries to the officers of savings institutions in other States. The results of these inquiries are necessarily somewhat fragmentary and incomplete, and they undoubtedly show less than the actual ownership of railway securities. The table following shows these results in detail.

Savings institutions.

State.	Number of answers received	Number of answers not giving information	Banks not owning railway securities: Number not giving any further information	For which complete data were supplied: Number	Number of depositors	Total deposits	Banks owning railway securities: Number	Number of depositors	Amount of deposits	Railway bonds owned, book value	Railway shares owned, book value	All railway securities owned, book value
Alabama	10	0	8	2	5,157	$491,608						
Arizona	1	0	1									
Arkansas	2	0	2									
California	57	2	11	26	58,434	20,042,618	18	215,118	$165,529,375	$13,661,500		$13,661,500
Colorado	6		1	4	2,196	504,583	1	6,000	1,575,000	110,000		110,000
Delaware	2						2	27,714	7,440,036	2,050,000	$185,116	2,235,214
District of Columbia	4	0	2				2	33,073	6,434,554	181,033		181,033
Florida	2		1	1	1,300	300,000						
Georgia	8	0	4	3	7,737	325,788	1	1,175	216,395	22,000		22,000
Illinois	25	3	6	12	157,088	66,382,126	4	11,420	4,308,207	704,542	14,983	719,525
Indiana	4	0	1	3	20,220	6,193,667						
Iowa	451	37	101	203	131,846	52,164,772	9	14,724	4,810,371	169,500	27,200	196,700
Kentucky	6	0	3	3	7,650	958,000						
Louisiana	4			3	14,939	2,039,680	1	19,091	6,384,951	211,420		211,420
Maryland	25	1	6	5	5,047	1,155,307	13	187,690	71,185,418	26,415,180	2,064,138	28,479,318
Michigan	224	9	57	127	156,408	50,251,377	31	117,330	46,213,774	2,560,423	40,000	2,600,423
Minnesota	8			4	4,026	792,923	4	[a] 20,713	[a] 5,823,483	345,650	10,000	355,730
Missouri	24	3	6	13	14,165	5,080,434	2	1,812	1,052,240	42,525		42,525
Nebraska	5		2	3	2,580	443,000						
North Carolina	4			4	8,078	1,251,719						
Ohio	66	2	24	34	71,025	17,896,242	6	37,455	9,383,000	136,600	3,750	140,350
Oregon	3	0	2				1		3,170,682	420,000		420,000
Pennsylvania	20	2	3	5	15,830	5,236,119	10	331,891	137,856,693	78,945,117	132,587	79,077,704
South Carolina	17	1	7	9	6,962	1,635,195						
South Dakota	3		1	2	3,500	1,150,000						
Utah	8	1	3	3	44,409	4,474,389	1	3,650	2,037,751	141,000		141,000
Virginia	11	1	4	5	3,535	197,764	1	515	150,200	5,000		5,000
Washington	1	0	1									
West Virginia	7		2	4	8,312	1,327,420	1	408	134,252	26,110		26,110
Wisconsin	8		2	5	15,368	2,928,136	1	19,762	9,222,885		51,000	51,000
Total	1,016	62	261	483	765,812	243,223,864	109	[b] 1,099,066	482,989,407	126,148,337	2,528,854	128,677,191

[a] Data for one bank not included.

[b] Depositors in Oregon not included.

Combining the results secured from both public and private investigations we have the following:

Savings institutions.

	Number of depositors.	Total deposits.	Railway (steam) securities owned.[a]	Per cent of deposits.
Six States, complete	5,174,718	$2,177,859,256	$442,354,086	20.31
Thirty States, incomplete	1,099,036	482,939,407	128,677,191	26.64
Total	6,273,754	$2,660,798,663	$571,031,277	21.46

[a] Book value.

It is worth noting that the average amount to the credit of each of the 6,273,754 separate accounts represented by the foregoing summary is but $424.12, and that of the security for each average deposit 21.46 per cent, or $91.02, depends upon railway property. This means that there are upward of 6,000,000 owners of railroad property whose separate holdings amount to barely $91 each.

WHAT THE COLLEGES OWN.

The educational institutions of the United States have received many donations of large and small amounts which make up a vast aggregate. This wealth they hold as trustees for the present and future generations of the young men and women of America. Upon these foundations must be created a structure whose strength and symmetry will measure the future intelligence, progress, and prosperity of the American people. And the stability of this foundation is largely bound up with the stability of railroad investments.

Separate inquiries were necessary to elicit the facts concerning these investments, and the results are necessarily incomplete. It has been ascertained, however, that 74 institutions of learning, nearly all of them colleges or universities, but including a few secondary schools, hold greater or less amounts of railroad securities. Of these, 67 own bonds and 34 own stocks; some, of course, owning both. The following data summarize the results of this portion of the investigation:

EDUCATIONAL INSTITUTIOINS.

Number represented	74
Total endowments	$142,242,079
Railroad bonds owned	43,381,318
Railroad shares owned	4,087,009
Total railroad securities owned	47,468,327
Proportion of railroad securities to total endowments, per cent	33.37

The valuations of the railroad securities in the foregoing are, with insignificant exceptions, those adopted by the respective treasurers in making up their balance sheets. A few institutions gave estimated values and one gave par values for bond investments only, and these data have been used as reported. It is not believed that this course materially affects the result.

WHAT INSURANCE POLICY HOLDERS OWN.

Various classes of insurance companies base their guaranties of protection against extraordinary losses in a large measure upon the stability of their investments in railroad enterprises.

FIRE INSURANCE COMPANIES.

The total wealth of the American people is estimated by the Bureau of Statistics in the Department of Commerce and Labor at $94,300,000,000. Much of this aggregate, however, consists of real estate and other property which from its nature is not subject to the risk of destruction by fire or not insurable against fire losses. Yet the fire insurance companies which are authorized to do business in the State of Massachusetts (the list probably includes all of the larger companies, but undoubtedly excludes many small concerns whose business is confined to the localities in which they exist) have now in force fire policies in the aggregate amount of $26,083,790,625. Who can doubt that the protection afforded by these policies is so widely diffused as to include all but a relatively negligible proportion of the owners of insurable property? Who can doubt that this protection extends to almost all the farmhouses and small homes of the country? The railroad securities owned and held as collateral by the fire insurance companies investigated are shown below:

[Those fire insurance companies authorized to do business in Massachusetts.]

Amount of policies in force	$26,083,790,625
Railroad securities owned:	
Shares, number	281,458
Shares, book value	$30,157,552
Bonds, book value	83,545,341
Total, book value	113,702,893
Railroad securities held as collateral:	
Shares, number	13,897
Shares, market value	$1,074,881
Bonds, market value	674,871
Total, market value	1,749,752

When it is realized that the aggregate assets of the companies included in the foregoing statement amount to $393,148,697, it must be evident that the security which they afford would be seriously impaired by any successful attack upon railroad values. Leaving out of the account the railroad bonds and shares which they hold as security for loans, those of which they are the actual owners amount to 28.92 per cent of their entire assets. It follows that of the $26,083,790,625 which represent the fire risks covered by insurance no less than $7,543,432,249 depends upon the stability of railroad values.

ACCIDENT AND GUARANTY COMPANIES.

[Those authorized to do business in Massachusetts.]

Railroad securities owned:	
Shares, number	54,408
Shares, book value	$4,840,662
Bonds, book value	10,915,587
Total, book value	15,756,249

Railroad securities held as collateral:	
Shares, number	**1,740**
Shares, market value	**$30,815**
Bonds, market value	**5,150**
Total, market value	**35,965**

LIFE INSURANCE COMPANIES.

The life insurance companies of the country constitute the largest class of investors in railroad property. Through them vast numbers of American citizens protect their families more or less completely against the financial difficulties that too often add want and privation to the natural sufferings that inevitably attend death. Through them the dependent members of millions of families are the actual beneficial owners of hundreds of millions of railroad property.

There is one form of life insurance which appeals exclusively to wage-earners and other persons whose incomes are very moderate. It is known as "industrial" insurance, because it is particularly in the ranks of the manual workers that its agents expect to find its patrons. Six companies now write policies of this class, and their policy holders number no less than 13,789,186, while the aggregate of their policies is $1,894,811,287. These companies own bonds of steam railroads to the amount of $50,236,742 and shares to the value of $2,011,294. They hold as collateral for loans railroad bonds worth $1,124,645 and shares worth $605,600. The following table includes all classes of life insurance:

LIFE-INSURANCE COMPANIES.

[Those authorized to do business in Massachusetts.]

Number of policy holders:	
Ordinary	**4,358,196**
Industrial	**13,789,186**
Total	**18,147,382**
Amount of policies in force:	
Ordinary	**$9,121,600,341**
Industrial	**1,894,811,287**
Total	**11,016,411,628**
Railroad securities owned:	
Shares, number	**432,126**
Shares, book value	**$48,661,655**
Bonds, book value	**619,601,241**
Total, book value	**668,262,896**
Railroad securities held as collateral:	
Shares, number	**259,670**
Shares, market value	**$21,878,199**
Bonds, market value	**24,503,084**
Total, market value	**46,381,283**

The assets of the companies represented in the foregoing statement aggregate $2,128,131,253, so that the railroad securities owned, excluding those held as collateral, amount to 31.40 per cent of the total security for the payment of their policies.

A RECAPITULATION.

A recapitulation of the data in regard to insurance companies follows:

ALL CLASSES OF INSURANCE COMPANIES.

[Those authorized to do business in Massachusetts.]

	Railway securities.		
	Owned.	Held as collateral.	Total.
Shares, number	767,992	275,307	1,043,299
Shares, value	$83,659,869	$22,983,895	$106,643,764
Bonds, value	714,062,169	25,183,105	739,245,274
Total	$797,722,038	$48,167,000	$845,889,038

The extent in which the business life of the nation is based upon railroad values and the diffusion of railroad ownership may be summarized, so far as they are disclosed by these investigations, by the following table:

Value of railroad securities held.

By the insurance companies investigated	$845,889,038
By the savings institutions investigated	571,031,277
By the educational institutions investigated	47,468,327
Total	$1,464,388,642

Who can doubt that complete returns from these three classes of institutions would show that they hold much more than one and one-half billions of railroad property?

CONCLUSIONS.

On February 24, 1903, the Interstate Commerce Commission reported to the Senate the market value of the railroad securities of the country, and its report has been published as Document No. 178, of the Fifty-seventh Congress, second session. This report shows that taking the average market values of March 31, June 30, September 30, and December 31, 1900, and applying this average to the bonds and shares outstanding on June 30, 1900, the aggregate market value of the railroad securities investigated was $8,351,523, plus some allowance for $812,066,859 in par value of securities, the market value of which was not ascertained. Assuming that the book values reported by the various concerns covered by this investigation are fairly conservative they should be comparable, roughly at least, with the market values of the year 1900. If this is so it would ap-

pear that the present investigation, hasty and incomplete as it has necessarily been, has disclosed the location of the beneficial ownership of about one-sixth of the railroad property of the country. And the beneficial ownership thus disclosed is not concentrated in the hands of the wealthy, but represents the savings of the farmers, the artisans, the small dealers, and other citizens whose incomes are moderate and whose savings are small.

WAGES.

Far the larger portion of railway expenditures consist of the wages and salaries of employees. It is true that the rates of wages paid have largely increased during the last few years, but no one has been heard to contend that any class of railway labor is overpaid.

The following table shows aggregate wages and salaries for each year since 1895, their relation to operating expenses, and, to answer a familiar criticism, the amounts and the proportion of the total paid as salaries of general officers:

Wages and salaries.

Year.	Operating expenses.	Wages and salaries.		Salaries of general officers.	
		Amount.	Per cent of operating expenses.	Amount.	Per cent of total wages and salaries.
1904	$1,257,538,862	a$775,321,415	61.65	a$14,244,121	1.84
1903	1,116,248,747	676,029,592	60.56	13,090,294	1.94
1901	1,030,997,240	610,713,701	59.27	13,141,428	2.15
1900	961,428,511	577,264,841	60.04	13,157,420	2.28
1899	856,909,999	522,967,896	61.03	12,964,442	2.48
1898	817,978,276	495,055,619	60.52	12,632,284	2.55
1897	752,524,764	465,601,581	61.87	12,304,161	2.64
1896	772,980,044	468,824,551	60.65	12,497,957	2.67
1895	725,720,415	445,808,261	61.39	12,234,686	2.75

a One railway, the Chicago, Milwaukee and St. Paul, estimated.

In connection with the foregoing table the fact that the payments for railway supplies such as fuel, rails, cars, etc., are largely indirect payments for labor should not be overlooked. No comment is necessary except to direct attention to the fact that in good and bad times alike the ratio of wages and salaries to operating expenses has varied within the narrowest limits.

I should like to insert in this connection the resolutions passed at the annual convention of the Order of Railway Conductors, in which they indicate a lively appreciation of the effect that this proposed legislation might have upon them. These resolutions were published in the Portland Oregonian of May 14, 1905.

The CHAIRMAN. They will be inserted as part of your statement.

Railroad rate legislation was the theme considered by the convention of the Order of Railway Conductors yesterday, and the order, through the delegates, expressed itself as heartily in accord with the policy of President Roosevelt on rebates and discriminations, but a resolution opposing the regulation of railroad rates by a Government commission was adopted:

"Whereas the Congress of the United States will have before it at the coming session the question of additional legislation affecting the American railways,

employing 1,300,000 people: Therefore, be it, by the Order of Railway Conductors in biennial convention assembled,

"*Resolved*, That we hereby indorse the attitude of President Roosevelt in condemning secret rebates and other illegalities, and commend the attitude of the heads of the American railways, who, with practical unanimity, have joined with the President on this question; and be it further

"*Resolved*, That we respectfully represent to Congress the inadvisability of legislation vesting in the hands of a commission power over railway rates, now lower by far in the United States than in any other country; that this low cost of transportation is the result of the efficiency of American railway management and operation, which have built up the country through constant improvement in service and development of territory, while at the same time recognition has been given to the value of intelligence among employees, in contrast to foreign methods, where high freight rates and lowest wages for employees obtain; that the freight rates of this country average only 2 per cent of the cost of articles to the consumer; thus making the freight rate an insignificant factor in the selling price, numerous standard articles being sold at the same price in all parts of the country; and be it further

"*Resolved*, That regulation of rates by a Government body would, in the opinion of this convention, result in litigation and confusion, and inevitably tend to an enforced reduction of rates, irrespective of the question of the ability of the railroads to stand the reduction, especially in view of the increased cost of their supplies and materials; and be it further

"*Resolved*, That the proposed legislation is not in harmony with our idea of the spirit of American jurisprudence, inasmuch as it contemplates that a single body shall have the right to investigate, indict, try, and condemn, and then enforce its decisions at the cost of carriers, pending appeal, which is manifestly inequitable; and that if there is to be legislation on this subject it should be such as would secure and insure justice and equity, and preserve equal rights for all parties concerned, but, in view of the facts, legislation affecting rates is not called for at this time and would be inadvisable; and be it further

"*Resolved*, That this convention finds itself in accord with President Roosevelt, who, in a message to Congress, has said: 'It must not be forgotten that our railways are the arteries through which the commercial lifeblood of this nation flows. Nothing could be more foolish than the enactment of legislation which would interfere with the development and operation of these commercial agencies.'"

THE DECLINE IN RATES.

Mr. NEWCOMB. No one denies that the progressive decline in the charges for railway service is the most significant fact of American railway history. It is alleged, however, in some quarters, that this decline has been interrupted and either that the general level of rates has recently been stationary or that there has been during the last four or five years a recognizable upward tendency. I have already shown the decline in the average rates per ton per mile from 1870 to 1903 on all American railway freight traffic, and it is a fact that, reaching their lowest level in the year 1899, these average rates show thereafter a slight rise, until in the last reported year, 1903, the average was 7.63 mills, or 5.39 per cent higher than 7.24 mills, the average of 1899. I shall hereafter show that this nominal advance was largely due to the changed geographical distribution of traffic and that it much less than compensated for the decreased purchasing power of the money in which the rates were paid. I now submit a table showing the average gross receipts per ton per mile, as reported by the Interstate Commerce Commission for each of the ten geographical groups according to which its railway statistics are classified.

Railway receipts per unit of service.

Group.	Region.	Revenue per ton of freight per mile.			
		1890.	1895.	1899.	1905.
		Mills.	*Mills.*	*Mills.*	*Mills.*
I	Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut	18.73	12.23	11.23	11.67
II	New Jersey, Delaware, Maryland, New York, east of Buffalo; Pennsylvania, east of Pittsburg; West Virginia, north of Parkersburg	8.28	6.98	5.82	6.67
III	New York, west of Buffalo; Pennsylvania, west of Pittsburg; Michigan, lower peninsula; Ohio, Indiana	6.95	6.42	5.29	6.07
IV	West Virginia, south of Parkersburg; Virginia, North Carolina, South Carolina	8.44	6.70	5.94	7.14
V	Kentucky, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, east of Mississippi River	10.61	8.95	8.07	8.27
VI	Illinois, Wisconsin, Minnesota, Iowa; Missouri, north of St. Louis and Kansas City; South and North Dakota, east of Missouri River; Michigan, upper peninsula	9.61	9.61	8.21	7.74
VII	Nebraska, Wyoming, Montana, North and South Dakota, east of Missouri River; Colorado, north of Denver	13.60	10.98	11.01	9.80
VIII	Arkansas, Indian Territory, Oklahoma Territory, Kansas, Colorado, south of Denver; Texas, Panhandle; New Mexico, north of Santa Fe	11.52	11.61	9.68	9.62
IX	Texas, except Panhandle; Louisiana, west of Mississippi River; New Mexico, north of Santa Fe	13.03	12.53	10.65	9.74
X	Washington, Oregon, Idaho, California, Arizona, Nevada, Utah; New Mexico, western portion	16.51	12.61	11.36	10.05
	The United States	9.41	8.39	7.24	7.63

The foregoing table shows that the average rates were lower in 1903 in every one of the ten groups than in 1890, that they were lower in nine groups than in 1895 and lower in five groups than in 1899. West of a line formed by the western shores of the Great Lakes, the Illinois-Indiana State line, and the Mississippi river every group shows a marked decline from 1899 to 1903. The following table shows for each of these groups and for all of them together the difference between what the shippers actually paid for railway freight and the higher amounts which they would have had to pay had the higher average rates of 1890, 1895, or 1899 been maintained:

Amounts saved.

Group.	Traffic movement in 1903, in ton-miles.	As compared with the year—		
		1890.	1895.	1899.
VI	32,535,907,498	$60,842,147	$60,842,147	$15,291,877
VII	5,842,151,338	22,200,175	6,893,739	7,069,008
VIII	12,541,491,467	23,828,834	24,957,566	752,489
IX	5,595,354,082	18,408,715	15,611,068	5,091,772
X	8,724,936,974	56,363,036	22,335,889	11,429,667
Total	65,239,841,354	$181,642,964	$130,640,381	$39,634,808

The great agricultural region of the Mississippi and Missouri valleys is embraced in Groups VI, VII, and VIII, while Group IX includes the farms, cotton plantations, and cattle ranches and ranges of Texas. Group X includes the Pacific Coast States. It is especially noteworthy that there has been no cessation in these important regions of the decline in railway charges, even as measured in money of greatly decreased purchasing power.

Rates for specific services and particular commodities are constantly being reduced. Nearly all of the three hundred and odd new rate schedules received in the office of the Commission on every working day are issued to report reductions.

The most important single rate in the country is that on which grain is moved by the all-rail routes between Chicago and New York. This is not only because it is the rate between the greatest grain market in the United States and the most important port through which grain is transshipped for export, but because the Chicago-New York rate is used as the basis of other rates in such a way that any change involves a change in the rates applied to substantially every bushel of wheat sent to market. The following table shows the average annual rates on wheat from Chicago to New York via the all-rail and lake-and-rail routes, and on wheat and flour via the all-rail routes from St. Louis to New York:

Average rates on grain and flour.

[From Statistical Abstract for 1903, pp. 408–409.]

Year.	Wheat.			Flour—St. Louis to New York, per barrel, all rail.
	Chicago to New York, per bushel.		St. Louis to New York, per 100 pounds, all rail.	
	All rail.	Lake and rail.		
	Cents.	*Cents.*	*Cents.*	*Cents.*
1880	15.7	19.9	42	84
1881	10.4	14.4	32	64
1882	10.9	14.6	29.5	59
1883	11.5	16.5	33	66
1884	9.95	13.125	26	52
1885	9.02	14	22.14	44.29
1886	12	16.5	1.29	58
1887	12	[a]15.74	32.13	64.25
1888	11	[a]14.5	29.5	59
1889	[a]8.7	15	28.5	58
1890	8.5	14.31	27.63	52.63
1891	8.53	15	29	58
1892	7.55	14.23	26.62	58
1893	8.44	14.7	28.5	57
1894	7	12.88	24.73	50
1895	6.95	12.17	23.57	47
1896	7.82	12	23	46
1897	7.37	12.32	23.64	47.26
1898	4.96	11.55	22.25	45.10
1899	6.63	11.13	21.95	43.90
1900	5.05	[b]9.08	19.38	38.76
1901	5.57	[b]9.02	17.83	38.66
1902	5.78	[b]8.75	20.66	41.33
1903	6.17	[b]8.89	21.50	42.50

[a] Published rates; actual rates lower.
[b] For export; wheat for domestic use higher.

One of the ways in which reductions are effected is by moving articles from higher to lower classes in the freight classifications. I recently made a hasty examination of the classification changes, from 1887 to 1902, among the representative articles of freight selected by the Interstate Commerce Commission for illustrative purposes and given in its "Forty Year Review of Changes in Freight Tariffs." The result of this study shows that out of 847 representative commodities, the entire number shown by the Commission, the classification of 468, or 55.26 per cent, remained unchanged from 1887 to 1902; that of 254 articles, or 29.98 per cent, was reduced, and that of 125, or

14.76 per cent, was advanced. The details appear in the following table:

Net changes in the classification of freight, 1887 to 1902.[a]

Classifications.	Number of items.			
	Classified lower in 1902 than in 1887.	Classified higher in 1902 than in 1887.	Classified the same in 1902 as in 1887.	Total of representative items.
The Official Classification:				
Less than carload shipments	46	65	160	271
Carload shipments	75	30	168	273
Total	121	95	328	544
The Western Classification:				
Less than carload shipments	19	11	74	104
Carload shipments	45	12	47	104
Total	64	23	121	208
The Southern Classification	69	7	19	95
Grand total	254	125	468	847

[a] This table does not cover all items in the various classifications, but only those selected as representative by the Interstate Commerce Commission. The comparisons relate to the representative commodities used by the Commission in making up the comparative tables on pages 24 et. seq. of "A Forty-Year Review of Changes in Freight Traffic."

Among recent reductions of importance is that of the rate on lumber from St. Louis and Kansas City to St. Paul and Minneapolis, from 16 to 14 cents per 100 pounds. Sugar rates from the Atlantic seaboard to the Missouri river and to New Orleans have been reduced, and so have crackers and other bakery products throughout the entire West. The rates from the Mississippi river to points in Iowa on soft coal; those on seed wheat for the farmers of Minnesota, Iowa, and Dakota; those on wire articles, nails, etc., from Chicago and Milwaukee to the Mississippi river, and those on grain from Mississippi river crossings to points in Ohio, Indiana, and Michigan furnish other recent examples of significant and far-reaching reductions. The most important of all, however, are those on traffic destined to Atlanta and other southern cities. These apply to the greater portion of the entire South and from both western and eastern points of origin. The following table is merely illustrative of these important changes:

[Rates in cents per hundred pounds.]

To Atlanta, Ga., from	Classes.											
	1.	2.	3.	4.	[illegible]	5.	A.	[illegible]	C.	D.	E	H.
Boston, Mass., and Providence, R. I.:												
Previous rates	114	98	86	73	60	49	36	48	40	39	58	68
Present rates	105	93	83	68	56	44	36	48	40	39	58	60
Reduction	9	5	3	5	4	5	0	0	0	0	0	8
New York, N. Y., and Philadelphia, Pa.:												
Previous rates	114	98	86	73	60	49	36	48	40	39	58	68
Present rates	105	93	83	68	56	44	36	48	40	39	58	60
Reduction	9	5	3	5	4	5	0	0	0	0	0	8
Baltimore, Md.:												
Previous rates	107	92	81	68	56	46	34	45	37	36	55	65
Present rates	98	87	78	63	52	41	34	45	37	36	55	57
Reduction	9	5	3	5	4	5	0	[illegible]	0	0	0	8

COMMODITIES.

To Atlanta.	From Boston, Mass., and Providence, R. I.			From New York, N. Y., and Philadelphia, Pa.			From Baltimore, Md.		
	Previous rates.	New rates.	Reduction.	Previous rates.	New rates.	Reduction.	Previous rates.	New rates.	Reduction.
Iron, special, L. C. L	43	40	3	43	40	3	43	39	3
Ale, beer, porter, and other malt liquors, ginger ale, root beer, and mineral water, O. R. L., C. L	38½	33	5½	38½	33	5½	35½	30	5½
Canned goods, N. O. S., C. L	49	44	5	49	44	5	45	40	5
Same, L. C. L	61	57	4	61	57	4	56	52	4
Glassware: Fruit jars and jelly glasses, strt. or mixed, C. L	57	50	7	57	50	7	53	46	7
Window glass and rough glass for skylights, C. L.	57	53	4	57	53	4	53	49	4
Glucose, O. R. L., in wood, C. L	36	30	6	32	30	2	30	28	2
Same, L. C. L	36	34	2	36	34	2	34	32	2
Molasses and sirup, O. R. L., in wood or in tin cans, boxed, C. L	36	[redacted]	6	36	30	6	34	28	6
Same, L. C. L	36	[redacted]	2	36	34	2	34	32	2
Oatmeal, rolled oats, etc., any quantity	35	30	5	35	30	5	32	27	5
Pickles, vinegar, sauerkraut, etc	60	56	4	60	56	4	56	52	4
Soap, laundry, in boxes, rel. and slush and soap stock, shipped to soap manufacturers only	35	30	5	35	30	5	33	28	5

To Atlanta, Ga., from—	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.*
Cincinnati, Ohio, and Louisville, Ky.:													
Previous rates	107	92	81	69	56	46	26	35	26	24	46	59	49
Present rates	98	87	78	63	52	41	26	33	26	22	46	45	44
Reduction	9	5	3	5	4	5	0	2	2	2	0	3	4
St. Louis, Mo.													
Previous rates	135	115	101	82	[redacted]	56	35	49	35	29	59	63	69
Present rates	126	110	98	77		51	35	41	33	27	56	55	65
Reduction	9	5	3	5	4	5	0	3	2	2	0	3	4
Memphis, Tenn.:													
Previous rates	103	88	77	64	53	49	24	31	24	20	44	49	49
Present rates	94	83	74	59	48	37	24	29	23	18	44	41	39
Reduction	9	5	3	5	4	5	0	2	2	2	0	3	4
Chicago, Ill.:													
Previous rates	147	126	106	85	71	58	40	47	36	34	61	69	69
Present rates	138	121	103	80	67	53	40	45	36	32	61	60	64
Reduction	9	5	3	5	4	5	0	2	3	2	0	3	4

* Rates in cents per barrel.

COMMODITIES.

To Atlanta.	From Cincinnati, Ohio, and Louisville, Ky.			From St. Louis, Mo.			From Memphis, Tenn.			From Chicago, Ill.		
	Previous rates.	New rates.	Reduction.	Previous rates.	New rates.	Reduction.	Previous rates.	New rates.	Reduction.	Previous rates.	New rates.	Reduction.
Agricultural cultivating implements, C. L	40	35	5	50	45	5	36	31	5	52	47	5
Canned goods, C. L	45	40	5	55	50	5	41	36	5	60	55	5
Same, L. C. L	56	52	4	70	66	4	52	48	4	76	72	4
Flour:												
In sacks	24	22	2	[illegible]	[illegible]	2	20	18	2	34	32	2
Self-raising—												
In sacks	24	22	2	31	29	2	20	18	2	39	37	2
In barrels	48	44	4	62	58	4	40	36	4	72	68	4
Glassware: Fruit jars and jelly glasses, straight or mixed, C. L	53	46	7	61	56	5	49	42	7	68	61	7
Glass, rough, for skylights, C. L., and window glass, C. L	53	49	4	[illegible]	61	4	49	45	4	68	64	4
Meats, fresh, C. L	45	43	2	58	56	2	41	39	2	62	60	2
Oatmeal, rolled oats, etc., any quantity	32	27	5	[illegible]	57	2	28	23	5	42	37	5

CLASSES.

To Atlanta from Virginia cities.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.a
Previous rates	84	79	84	52	43	40	[illegible]	[illegible]	28	27	45	55	55
Present rates	80	76	82	50	41	37	24	[illegible]	23	27	45	55	55
Reduction	4	3	2	2	2	3	0	0	0	0	0	0	0

a Rates in cents per barrel.

COMMODITIES.

To Alanta from Virginia cities.	Previous rates.	Present rates.	Reduction.
Ale, beer, porter, and other malt liquors, ginger ale and mineral water, C. L	22½	21½	1
Canned goods, C. L	32	29	3
Same, L. C. L	39	37	2
Glassware: Fruit jars, glass and jelly glasses, strt. or mixed, C. L	40	34	6
Glass, window and rough, for skylights, C. L	40	37	3
Iron, scrap, and steel, including old rails (not for relaying purposes), when shipped with mixed lots of scrap iron, C. L., per ton of 2,000 pounds	2.40	1.92	48
Soap, common	30	26	4
Soap powders and washing compounds	30	26	4
Starch, C. L	29	25	4
Sirup, glucose, and molasses, O. R. L., in wood or in tin cans, boxed, any quantity	31	26	5

RAILWAY RATES HAVE NOT ADVANCED.

I come now to the charge frequently repeated by the advocates of the legislative proposals which you are considering, that recent years have seen great advances in the charges for railway transportation. This charge rests principally upon estimates made by the Interstate Commerce Commission in its Fourteenth Annual (1900) Report, upon the report of the Industrial Commission (Vol. XIX,

p. 281) and upon the special report to the Senate submitted by the Interstate Commerce Commission on April 7, 1904 (Senate Doc. No. 257, 58th Cong., 2d sess.). These estimates have been widely disseminated, and the fact that they are all erroneous in principle has naturally failed to receive the public attention which it ought to have. There can be no doubt that this misinformation has been largely instrumental in creating sentiment in favor of rate legislation. In its annual report for the year 1900 the Commission published a discussion of the then recent changes in the great freight classifications, which was, in substance, incorporated in the final report of the Industrial Commission. The most material difference was, that while the Interstate Commerce Commission cautiously refrained from more than suggesting that "if the rates can be advanced 25 per cent," the ingenuous author of the report of the Industrial Commission, scorning mere intimations, boldly plunged into direct statement and asserted that there had been an advance in the published rates of the railways of "probably not less than 25 per cent." The Industrial Commission admitted that its claim that rates had advanced 25 per cent was not supported by the average rates per ton per mile which had been earned by the individual railways for which data were available when the report was written, and that in many cases these averages showed decreases. But it alleged that these averages were generally vitiated by including in the divisors by which they were controlled large amounts of "company freight," which moves free. The amount of this class of freight had been exceptionally heavy since the revival of general industrial prosperity, and it was claimed that its inclusion diminished the later averages so that they were not comparable, as representing rates actually paid, with those of earlier years. The only trouble with this argument is that it is not based upon a correct premise. "Company freight" is not included in the ton-mileage which is divided into freight receipts in order to determine average rates per ton per mile. No important railway employs this deceptive method, and the instructions for filling the schedules filed annually with the Interstate Commerce Commission have the effect of excluding ton-mileage of this character from representation in the averages reported.

As has been said, the efforts of the Interstate Commerce Commission and of the Industrial Commission to sustain the allegation that there had been a great advance in freight rates followed substantially the same plan. On January 1, 1900, a new Official classification was promulgated by the roads north of the Ohio and Potomac and east of the Mississippi. It modified 824 of the ratings established by the classification which it succeeded and of the changes made 818 were advances from one class to another. This classification is applicable to traffic between Chicago and New York, unless, as in the case of grain, live stock and dressed meats, special commodity rates are provided.

Senator DOLLIVER. Was that not also applicable to all rates that were based upon that line?

Mr. NEWCOMB. So far as they moved east of that line, yes; except transcontinental business. Moving across the Mississippi river, the line in which the western classification applies, the rates are made by combinations.

Senator DOLLIVER. But up to the Mississippi river, between the

Mississippi river and New York, the Chicago rate governs them all, does it not?

Mr. NEWCOMB. Yes. It contains about 10,000 items, hence not to exceed 8⅓ per cent of the total were advanced. The Interstate Commerce Commission, however, utterly ignored the unchanged items, and applying the New York-to-Chicago rates to the items that had been transferred, ascertained that 434 had been advanced from the fourth to the third class, thus raising the rates applied to them between those points 42.8 per cent; that 214 had been taken from the third class and placed in the second, involving an advance between those points of 30 per cent; that 100 had been changed from the sixth to the fifth class, making an advance of 20 per cent, and that the other changes affecting from 1 to 32 items each had resulted in advances of from 16.6 per cent to 100 per cent. The rates between the same points on three other items had been reduced 30 per cent and those on an equal number reduced 14.3 per cent. The Commission multiplied each percentage of increase by the number of items to which it applied, and dividing the sum of the products by 818, the total number of advances, obtained 35.5, which it declared to be the "average advance." Now, this is about as bad a misuse of figures as could be devised. It not only ignores six items which were reduced and more than 9,000 which were not changed at all, but it also rests upon the obviously incorrect assumption that the traffic movements of all the items are equal in volume. The latter error would vitiate any calculation. Its extent is suggested, to those in any way familiar with traffic movement, by the fact that at least 85 per cent of the changes in the Official classification related to the comparatively insignificant traffic that moves in less than carload lots. Passing over this error, however, it will be instructive to see how the calculation would stand if all of the items in the classification had been included. This is shown in the table which follows:

	Number.	Extension.
Items advanced 35 per cent	818	29,039
Items reduced 30 per cent	3	−90
Items reduced 14.3 per cent	3	−42.9
Items not changed	9,176	.....
Total	10,000	28,906.1

Average change, 2.89 per cent.

Thus a very simple and obviously necessary correction does away with all but 2.89 per cent of this advance of 35.5 per cent which has been exploited by two Federal commissions. It by no means shows the real change, for that could be ascertained only by finding the precise importance of every change, or, in other words, the exact volume of each item of traffic moved under the classification. Methods similar to those employed in connection with the Official classification were applied to the two other great classifications by the Interstate Commerce Commission, and the Industrial Commission blindly followed its lead. These calculations constitute absolutely the sole basis for the statement that rates have advanced 25 per cent. No other evidence in support of this absurd contention has been or can be adduced. A general increase in freight rates of 25 per cent throughout

the country would bring industry practically to a standstill. Its destructive consequences would be felt in every quarter and the bankruptcy of the lines foolish enough to bring it about and to persist in its maintenance would occur as soon as they could eat up the surpluses which they happened to have on hand when it was effected. No such threat has been directed at American industry from any quarter, and it never will be unless the direction of the railway business and the power to make railway rates is some time delegated to men whose qualifications have not been subjected to the competitive tests through which leadership in the railway field is now attained.

Senator DOLLIVER. Have you a statement of the articles upon which these advances took effect?

Mr. NEWCOMB. Such a statement was issued by the Department of Agriculture, compiled by my successor there, Mr. Edward G. Ward. I haven't it with me.

Senator DOLLIVER. It is poor comfort to a man who is transporting coffee, for example, from New York to Chicago, and finds himself confronted with a substantial increase to be informed that the average increase is only 2½ per cent. I think those figures, in order to have any significance at all, ought to be applied to the articles and actual rates that were charged.

Mr. NEWCOMB. The method you suggest would show, of course, the advance on the articles that were advanced.

Senator DOLLIVER. There is nobody interested very much in the average advance. People are interested in the advance upon the article they are shipping or buying.

Mr. NEWCOMB. I beg your pardon, Senator, but it seems to me that the question that the Interstate Commerce Commission was considering, and that we are attempting to consider just now, is whether there has been a change in the general level of railroad charges and what that change has been, whether upward or downward and how far it has been in either direction.

Senator DOLLIVER. I admit the force of your argument as applied to that, but I regard the whole scheme of averages applied to these matters where the transactions are actual as worthless, whether it is made by the Interstate Commerce Commission or by you.

Mr. NEWCOMB. I think not quite worthless, if made by either of us on a correct method. Averages are not applicable to special cases, but they should be a test of general movement, and we have to resort to them because we can not go into all of the particulars.

Senator DOLLIVER. That is the exact thing the public is sinking into its mind just now—the freight in excess of what it had paid previously.

Mr. NEWCOMB. It did not pay 35 per cent more, assuming the correctness—and making an assumption we should not make—that all these articles moved in equal volume; but it is absolutely necessary to make some sort of an assumption in order to do anything with the figures at all. They paid 100 per cent before, and on 97 per cent of these articles they did not pay any more than they did before. The actual increase in amount of payment could not have been more than 2.89 per cent.

Senator DOLLIVER. Now, for example, the hay people complain that their classification was changed. Have you any information as to what actual change in the rate on hay was put into effect?

Mr. NEWCOMB. It was changed from fifth to sixth class.

Senator DOLLIVER. What actual change in the rate on hay did that make?

Mr. NEWCOMB. The rate from Chicago on fifth class is 30 cents and on sixth class is 25 cents. That would have been an increase of 20 per cent if the hay had moved all the way from Chicago to New York.

Senator DOLLIVER. Now, that kind of a statement has a definite value, it seems to me.

Mr. NEWCOMB. That would be very interesting, of course, to the hay shippers. The calculation I made, of course, by no means shows the precise change that occurred, and that change could not be figured except by taking into consideration the relative movements of each article, and I suppose that is impossible to ascertain; but these calculations, as made by these commissions, constitute absolutely the sole basis for the statement that the rates had advanced 25 per cent.

It is interesting to note that even in Document No. 257 the Commission admitted the lack of accuracy in the method followed in its report for 1900, stating that:

> The total number of ratings advanced was 818, but it was found that there were many duplications * * * and that such duplications amounted to about 30 per cent of the total number.

DOCUMENT NO. 257.

It is probable that no erroneous statement has ever been more frequently repeated, more widely disseminated, or more generally accepted than the assertion made by the Interstate Commerce Commission in Document No. 257, that during the year which ended with June 30, 1903, the railways collected from freight $155,475,502 more than they would at the rates of 1899. Among the various items of misinformation which have acted upon the public mind and have operated to create whatever general antirailway sentiment now exists, none has been more profoundly influential than this. It seizes the imagination by giving definite magnitude to a charge which had previously been general and indefinite. It is rather startling, then, to realize that this estimate was derived from figures which do not accurately portray the facts that they purport to represent, and were obtained by unwarranted methods of calculation, although the correct figures had been published and were available in the Commission's own reports.

Thus it was calculated (Doc. 257, p. 8) that the rate received per ton of freight carried during the year which ended with June 30, 1899, was 95.2 cents, but if the Commission had used the correct figure, to be found on page 96 of the report for 1899 of its Statistician, it would have appeared that the rate was substantially 2 cents higher, being actually 97.131 cents. Again it appears (Doc. 257, p. 4) that the average rate per ton which was used for the year 1903 was $1.0792, although the annual report of the Statistician to the Commission for the year 1903 shows (p. 97) that the actual average was $1.05158. You will observe that the result of these improper, erroneous, and needless calculations was to give a figure substantially 2 cents too low for the first year and one quite 2¾ cents too high for the last year, a total difference, superficially favorable to the Commission's

argument, of nearly 5 cents per ton. The mere substitution of the correct figures, taken from the reports of the Statistician to the Commission, for the erroneous figures, calculated especially for the purposes of this report, reduces the apparent increase of $155,475,502 to $98,047,874. I submit the following table, which shows in parallel columns the average rates per ton used in Document No. 257 and the correct figures as they are to be found in the successive annual reports of the Commission's own Statistician.

Average rate per ton.

Year.	Figures in Document No. 257.	Correct figures.[a]	Page of Statistician's reports.
1899	$0.9520	$0.97131	96
1900	.9524	.97530	95
1901	1.0269	1.05116	91
1902	1.0058	1.03219	96
1903	1.0793	1.05158	97

[a] See Statistician's reports for same years.

No one who examines the foregoing table will fail to appreciate the fact that the erroneous figures used by the Commission tended, apparently, to aid its argument. In the following table I have reproduced the table given on page 8 of Document No. 257, and have shown in parallel columns the correct figures which would have been used had the table been based upon the correct and easily accessible averages.

Year ending June 30—	Number of tons of freight carried.	Total freight revenue as charged.[a]	
		As given by the Commission.	The correct figures.
1899	959,763,583	$913,737,155	$932,227,966
1900	1,101,680,238	1,049,256,323	1,074,468,786
1901	1,089,226,440	1,118,543,014	1,144,951,265
1902	1,200,315,787	1,207,228,845	1,238,953,952
1903	1,221,475,948	1,318,320,604	1,284,479,677

Year ending June 30—	Amount of freight revenue at average rate per ton of—		Increase.	
	95.2 cents, being the average rate for the year ending June 30, 1899, as given by the Commission.	97.131 cents, being the average rate for the year ending June 30, 1899, the correct figures.	As given by the Commission.	The correct figures.
1899	$913,737,155	$932,227,966	.....	.....
1900	1,048,799,587	1,070,073,032	$456,736	$4,395,704
1901	1,036,943,571	1,057,976,533	81,599,443	86,974,732
1902	1,142,700,629	1,165,878,727	64,528,216	73,075,225
1903	1,162,845,102	1,186,431,803	155,475,502	98,047,874

[a] Assuming the tonnage of the first column to have been carried at the average rates reported by the Statistician.

Before passing from this subject, one more observation concerning the incorrectness of the Commission's figures should be made. In its apparent haste to get before the country an argument tending to show that railway rates had greatly increased, the Commission did not

wait for complete figures for the year 1903, as appears from a footnote on page 8 of Document No. 257. The figures used represent but 98 per cent of the mileage of the country. The later publication of complete figures shows that even upon the erroneous methods followed by the Commission the conclusion that earnings were $155,000,000 higher than they would have been at the rate of 1899, could not have occurred if complete figures for the year 1903 had been used. The number of tons carried in 1903 was actually 1,304,394,323, instead of 1,221,475,948, as stated in Document No. 257, and the total freight revenue was $1,338,020,026, instead of $1,318,320,604. (Doc. 257 p. 4.) Substituting these complete figures for those used by the Commission, but following its imperfect method, it would appear that the freight carried in 1903 earned for the railways $1.0258 instead of $1.0793 per ton, and, therefore, in the aggregate, only $96,236,630 more than it would have earned at the rates of 1899. It must be said of this method that although it is incorrect its results approach nearer to accuracy than the figures reported in Document No. 257.

The foregoing criticisms should be considered in connection with the statement made in transmitting the report of the Commission to the Senate, that the estimate in question represented "the best that can be obtained," and that it is "not without value as indicating enormous additions in recent years to the cost of railway transportation to the people of the United States."

Attention should be directed to the fact that in this document the Commission compared the average earnings of the year 1903 with the lowest average earnings in the history of the American railway system. The average rate per ton per mile for the year 1899 was absolutely the lowest ever received in the United States, which means that it was the lowest for any country and at any time in the history of railway transportation throughout the world. If any other year had been selected as the basis of comparison the results would have been quite different. One year is as good as another for purposes of this sort and, in order to show how a different selection might have operated, I submit a table based upon the year 1894. The first three columns in this table are identical with those which appear in the table prepared by the Commission (Doc. 257, p. 8), but in the fourth column I have used in the heading the average gross receipts per ton carried shown in the annual report of the statistician to the Interstate Commerce Commission for 1894 (p. 71), and in the same column in the body of the table the aggregate gross receipts which would have been obtained had this average prevailed in each of the years indicated in the column at the extreme left. The last column at the right shows how much less was received in each of the years than would have been received at the average of 1894. Aggregating these figures, which, it may be remarked parenthetically, have been correctly calculated, it appears that through reductions from 1894 to 1903 American shippers by rail saved in a single year $536,664,859, which may be set against the fictitious and exaggerated total of the apparent losses through increases from 1899 to 1903 given by the Commission, which total is $302,059,897. Thus it appears that in comparison with the rate of the year 1894 railway

earnings on the freight business of 1903 decreased $234,604,962 more than they increased in comparison with the rates in 1899.

Year ending June 30—	Number of tons of freight carried.	Total freight revenue as charged.	Amount of freight revenue at average rate per ton of $1.10252, being the average rate for the year ending June 30, 1896.	Decrease.
1899	959,763,583	$913,737,155	$1,058,158,546	$144,421,391
1900	1,101,680,238	1,049,256,323	1,214,624,496	165,368,173
1901	1,089,226,440	1,118,543,014	1,200,893,935	82,350,921
1902	1,200,315,787	1,207,228,845	1,325,372,161	116,143,316
1903	1,221,475,948	1,318,320,604	1,346,701,662	28,381,058

I do not wish to convey the impression that I attach much importance to this calculation. I have introduced it to show the possibilities of the kind of statistical juggling for which the Commission set the example, and I leave it with the single remark that while the Commission selected the one year which would serve its purpose, and, doubtless unintentionally, aided that purpose by ignoring figures compiled by its own Statistician, on the other hand, I have selected for my table one of the years least favorable for the purpose of showing a decrease and have accurately applied the available data, all of which are to be found in the reports of the Commission.

Unless it was for the purpose of obtaining the highest possible estimate of the alleged advance in rates it is impossible to discover any adequate reason for the abandonment by the Commission, in the preparation of Document No. 257, of the customary measure of traffic movement, which is the ton-mile. To state the traffic movement of any period in ton-miles is to give a figure in which distance as well as weight is accorded recognition. The distance factor is a varying one, and between 1899 and 1903 the average distance traversed by the tonnage used in the Commission's estimate increased from 128.85 miles to 132.80 miles, or 3.07 per cent. To ignore the increased service per unit of weight, as did the Commission, was to leave out of the account a factor of primary importance. The total railway freight movement of 1903 was equal to carrying 173,221,278,993 tons one mile. The average railway receipts from freight per ton per mile was 7.63 mills, or 0.39 mill higher than in 1899. Multiplying the ton-mileage of 1903 by this difference in the average rates of 1899 and 1903 gives $67,556,299, which is the extreme amount which can be assigned as the addition to the gross receipts of the railways by reason of the nominally higher average rate obtained in 1903.

It is contended in Document 257 that although data regarding the traffic movement of particular commodities are very meager it is possible to obtain from them estimates of the importance of advances on certain articles which, to quote the language of the Commission, "while considerably at variance with the actual figures, were they obtainable, will give a fair idea as to the increase in revenue resulting from an advance in rates on such articles." The probable extent of the "variance" from actuality and the Commission's comprehension of a "fair idea" may be given pretty definite value by

an examination of the process by which the report arrives at the conclusion that advanced rates on hay cost the shippers, in Official classification territory, of that article $2,434,384 during the fiscal year 1902. The Commission's estimate starts with the fact that the railways of the United States carried 4,681,509 tons of hay during the year which ended with June 30, 1902. It is assumed that 65 per cent of this tonnage moved in Official classification territory and that the advance amounted to 80 cents per ton. The assumption that 65 per cent of all hay moved by rail during the year was affected by the advance in this territory rests solely upon the fact that 65 per cent of the general tonnage originates in this region. But so strangely did the Commission misuse its own figures that it ignored the fact that the very page of its statistical report for 1902 which shows that about 65 per cent of all tonnage originated in Official classification territory also shows that only 32.65 per cent of "products of agriculture," of which hay constitutes a subclass, originates in that region. Again, the estimate that the advance amounted to 80 cents per ton is in contradiction of sworn testimony of experts to be found in the Commission's records to the effect that the advance did not, on the average, exceed 40 cents per ton. Supplying these corrections we have:

	The Commission's estimate.	The correct figures.
Number of tons of hay carried in the United States in the fiscal year 1902	4,681,509	4,681,509
Percentage probably carried in Official classification territory	65	32.65
Number of tons probably carried in Official classification territory	3,042,980	1,528,513
Average increase in rates per ton carried	$0.80	$0.40
Increased revenue from hay	$2,434,384	$611,405

Thus a reasonably conceived estimate of the effect of the advance in question, which advance has subsequently received the approval of a circuit court of the United States, indicates that it actually produced but little more than one-fourth of the revenue which the Commission erroneously estimated. The same methods of analysis show that the Commission's estimate that since January 1, 1900, the increased revenue due to the advance in hay rates amounted to "nearly $10,000,000" ought to be reduced to less than $2,500,000.

But assuming the Commission's figures to be correct it is worth while to see what the situation of the producer of hay was as compared with his situation before the rate was advanced. The United States Department of Agriculture carefully investigates the farm values of all the principal agricultural products at the close of each year. These investigations show that hay, on the farms of the United States, was worth to the producers thereof an average of $6 per ton on December 1, 1898. By December 1, 1899, the value had grown to $7.27 per ton, by December 1, 1900, to $8.89 per ton, and by December 1, 1901, to $10.01 per ton. Thus the farmers gained by increased prices a great deal more than they would have lost even had the imaginary increase in freight charges reported by the Commission been actually taken entirely out of their pockets. The following

table shows the difference between the imaginary losses and the real gains:

Hay.

Year.	Commission's estimate of tonnage affected by increase in rates.	Loss to producers had they paid all of an advance in freight of 80 cents per ton.	Gain to producers on account of higher prices than those in effect just before rates were advanced.	Excess of real gain over imaginary loss.
1900	2,672,860	$2,138,288	$3,394,532	$1,256,244
1901	2,656,355	2,125,084	7,676,866	5,551,782
1902	3,042,980	2,434,384	12,202,350	9,767,966
Total	8,372,195	$6,697,756	$23,273,748	$16,575,992

In other words, the increased prices of the three years, 1900, 1901, and 1902, made 8,372,195 tons of hay on the farms worth $23,273,748 more than at former prices, which is an actual increase in value 3.47 times as great as the Commission's imaginary increase in the cost of railway freight. The hay crop of 1899 in the United States exceeded in volume that of either 1900, 1901, 1902, or 1903, but the records of the Department of Agriculture show that the crop of each of the later years greatly exceeded that of 1899 in farm value. The augmentation of the value of their hay crops to the farmers of the United States on account of higher prices and notwithstanding diminished production amounted, from 1900 to 1903, inclusive, to $402,438,899. By the side of this vast sum an advance in freight of 40 cents per ton on one-third of the hay moved by railways appears insignificant.

Although the railways did not receive in 1903 $155,000,000 more than they would have received at the rates of 1899, it is not questionable that, on account of the decreased purchasing power of money—that is, the diminished volume of labor, the diminished quantity of coal, rails, and other supplies which a given sum of money would buy—they had ample use for any addition to their revenues which they could secure.

In 1899 it cost $756,968,999 to operate the railways of the United States; in 1903 the same expenses amounted to $1,257,538,862, an increase of $400,569,863. In 1899 railway labor, exclusive of salaried employees, received $481,264,109; in 1903 the same classes of labor received $720,580,923, an increase of $239,316,814. In 1899 the fuel used by locomotives cost $77,187,344; in 1903 it cost $146,509,031, an increase of $69,321,687. Comparing operating expenses with work done, it appears that in 1899 for every dollar expended for operation the railways were able to carry 17 passengsrs and 165 tons of freight one mile, and that at the rates in force in that year the average amount of gross receipts obtained for each dollar expended for operation amounted to 34 cents from passengers and $1.19 from freight, or an aggregate of $1.53. In 1903 the passenger mileage for each dollar expended in operation amounted to 16.6 and the freight mileage to 138. The nominal rates of 1903 being somewhat higher than those of 1899, these diminished totals of 1903 brought in 33 cents for passenger service and $1.05 from freight service, or a

total of $1.38. Thus each dollar of operating expenses in 1899 brought in $1.53 in revenue, not including that from miscellaneous services, while each dollar of operating expenses in 1903 brought in only $1.38 in revenue. The decrease amounts to substantially 10 per cent. The following table shows these data in detail:

Operating expenses.

	1899.	1903.
Operating expenses, total	$856,968,999	$1,257,538,862
Business done:		
Passenger mileage	14,591,327,713	20,915,763,881
Ton mileage	141,599,157,270	173,221,278,998
Per $1 of operating expenses:		
Passenger mileage	17	16.6
Ton mileage	165	138
Average receipts:		
Per passenger mile ..... mills	19.78	20.06
Per ton mile ..... do	7.24	7.63
Average receipts per $1 of operating expenses:		
From passengers	$0.34	$0.33
From freight	1.19	1.05
Total	$1.53	$1.38

Decrease of 10 per cent.

In another following table I have shown the results of calculations, similar to those just given, comparing the efficiency of each dollar expended for wages in the years 1899 and 1903. The table shows that the somewhat higher average rates of 1903, being based upon a lower efficiency per dollar expended, produced but $2.48 for each dollar spent in wages, while with higher efficiency and lower rates in 1899, each dollar spent in wages earned $2.73. The decrease again amounts to substantially 10 per cent. The table follows:

Wages (not including salaries).

	1899.	1903.
Wages, amount of	$481,264,109	$703,580,923
Passenger mileage	14,591,327,613	20,915,762,881
Ton mileage	141,599,157,270	173,221,278,998
Per $1 paid in wages:		
Passenger mileage	30.3	20.7
Ton mileage	294	246
Average receipts:		
Per passenger mile ..... mills	19.78	20.06
Per ton mile ..... do	7.24	7.63
Average receipts per $1 spent for wages:		
From passengers	$0.60	$0.60
From freight	2.13	1.88
Total	$2.73	$2.48

Decrease 10 per cent.

Fuel for locomotives represents, next to wages, the highest single expenditure for railway operation. The efficiency of the dollars spent for fuel has, owing to the increased cost of coal and other fuels, very rapidly decreased. The following table shows that each

dollar thus expended produced $17.02 of revenue in 1899 and about 30 per cent less, or $11.89, in 1903:

Coal and other fuel used by locomotives.

	1899.	1903.
Cost of coal and other fuel used by locomotives	$77,187,344	$146,509,031
Passenger mileage	14,591,327,618	20,915,782,881
Ton-mileage	141,599,157,270	178,321,278,993
Per $1 worth of fuel:		
Passenger mileage	189	143
Ton mileage	1,834	1,182
Average receipts:		
Per passenger mile ..... mills	19.78	20.06
Per ton mile ..... do	7.24	7.63
Average receipts per $1 worth of fuel:		
From passengers	$3.74	$2.87
From freight	13.28	9.02
Total	$17.02	$11.89

Decrease, 30 per cent.

The foregoing tables must suggest that the question whether railway rates have generally advanced or generally decreased during the years from 1899 to 1903 and subsequently can not be answered by simple comparisons of averages expressed in dollars and cents. It has long been realized that any effort to study the question of wages throughout an extended period which fails to take into consideration the purchasing power of the money received is worse than valueless, because it is deceptive and misleading. It has been generally recognized also that any effort to consider the condition of particular classes of producers by comparisons of the prices obtained for their products at different periods, as that of farmers by the prices of corn and wheat, is similarly dangerous unless these prices are turned into quantities of the commodities which such producers must purchase. Brief quotations from economists of recognized authority will serve to make this point clearer. In The Wealth of Nations Adam Smith said:

> Every man is rich or poor according to the degree in which he can afford to enjoy the necessaries, conveniences, and amusements of human life. * * * The real price of everything, what everything really costs to the man who wants to acquire it, is the toil and trouble of acquiring it. What everything is really worth to the man who has acquired it and who wants to dispose of it or exchange it for something else is the toil and trouble which it can save to himself and which it can impose upon other people. * * * The exchangeable value of everything must be equal to the extent of this power which it will convey to its owner. * * * Every particular commodity is more frequently exchanged for money than for any other commodity. The butcher seldom carries his beef or his mutton to the baker or the brewer in order to exchange them for bread or for beer, but he carries them to the market, where he exchanges them for money. * * * The quantity of money which he gets for them regulates, too, the quantity of bread and beer which he can afterwards purchase. * * * Gold and silver, however, like every other commodity, vary in their value, are sometimes cheaper and sometimes dearer, sometimes of easier and sometimes of more difficult purchase. * * * The discovery of the abundant mines of America reduced in the sixteenth century the value of gold and silver in Europe to about a third of what it had been before. * * * But as a measure of quantity, such as the natural foot, fathom, or handful, which is continually

varying in its own quantity, can never be an accurate measure of the quantity of other things, so a commodity which is itself continually varying in its own value can never be an accurate measure of the value of other commodities. * * * At all times and places that is dear which it is difficult to come at or which it costs much labor to acquire and that cheap which is to be had easily or with very little labor. * * * Commodities may be said to have a real and nominal price. * * * Real price may be said to consist in the quantity of the necessaries and conveniences of life, * * * nominal price in the quantity of money. * * * The distinction between the real and the nominal price of commodities and labor is not a matter of mere speculation, but may sometimes be of considerable use in practice. The same real price is always at the same value, but on account of the variations in the value of gold and silver the same nominal price is sometimes of very different values.

The following is from John Stuart Mill, in his Principles of Political Economy:

Money is a commodity, and its value is determined like that of other commodities, temporarily by demand and supply, permanently and in the average by cost of production. * * * The relations of commodities to one another remain unaltered by money; the only new relation introduced is their relation to money itself, how much or how little money they will exchange for. * * * The value of a thing is what it will exchange for. The value of money is what money will exchange for; the purchasing power of money. If prices are low, money will buy much of other things, and is of high value. If prices are high, it will buy little of other things, and is of low value. The value of money is inversely as general prices—falling as they rise, and rising as they fall.

And President Hadley, of Yale, in his Economics, said:

The value of money is measured by the quantity of other things which a unit of money will purchase. It varies inversely as the general level of prices. If general prices are high, a given amount of products or services will cost a great many dollars.

If the price of different commodities rose or fell simultaneously it would be easy to ascertain the amount of change in the general price level and in the value of money. But the price of each article is subject to independent variations of its own. * * * There is always considerable fluctuation in the purchasing power of coin. * * * The goods which he makes are valued, not as a source of enjoyment to the producer himself, but as a means of commanding the goods and services of others in the open market. * * * The piece wage received by any workman multiplied by the number of pieces which he makes in a day constitutes his day's earnings or nominal wage. The amount of comforts which he can buy with the money received as nominal wages represents his real wage.

It is perhaps because the study of comparative railway rates has been more lately undertaken that the same necessity has not yet received general recognition in this field of investigation. There can be no doubt that it exists.

Changes in the purchasing power of money have been scientifically investigated by many students whose labors cover long periods of time and include a wide range of commodities, and there can be no doubt that the close attention given to this subject has resulted in methods of great accuracy and reliability. The United States Department of Labor, under the direction of the greatest of statisticians, Hon. Carroll D. Wright, has established a series of index numbers according to a method which he developed that is probably the best and the most comprehensive ever continuously applied to this problem. Although this method has only been applied to the

period beginning with the year 1890, its use is sufficiently extended for the purposes of this discussion. The method employed was to collect large numbers of quotations of wholesale prices, which were classified in certain groups and averages obtained for each group and for all the commodities represented. The years from 1890 to 1899 were taken as the basis and represented as 100 per cent, while the prices of each year are represented as percentages of the bases thus established. I have applied the same method to the average rates per passenger per mile and per ton of freight per mile reported by the Interstate Commerce Commission and have placed the results in juxtaposition with the index figures reported by Colonel Wright. The following table, with the exceptions of the columns showing railway rates, is precisely as it appears in Bulletin No. 51, of the Department of Labor:

Wholesale prices and rates compared with averages for the decade from 1890 to 1899 (percentages).

Year.	Railway rates.		Wholesale prices.									
	Passenger rates.	Freight rates.	Farm products.	Food, etc.	Cloths and clothing.	Fuel and lighting.	Metals and implements.	Lumber and building materials.	Drugs and chemicals.	House furnishing goods.	Miscellaneous articles.	All commodities.
1890-1899	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
1890	105.4	112.1	110.0	112.4	113.5	104.7	119.2	111.8	110.2	111.1	110.3	112.9
1891	104.2	106.6	121.5	115.7	111.3	102.7	111.7	108.4	103.6	110.2	109.4	111.7
1892	103.4	107.0	111.7	103.6	109.0	101.1	106.0	102.8	102.9	106.5	106.2	106.1
1893	102.7	104.7	107.9	110.2	107.2	100.0	100.7	101.9	100.5	104.9	105.9	105.6
1894	96.6	102.5	95.9	99.8	96.1	92.4	90.7	96.3	89.8	100.1	99.8	96.1
1895	99.2	100.0	93.3	94.6	92.7	98.1	92.0	93.1	87.9	96.5	94.5	93.6
1896	98.2	96.0	78.3	83.8	91.3	104.3	93.7	93.4	92.6	94.0	91.4	90.4
1897	98.3	95.1	85.2	87.7	91.1	96.4	86.6	90.4	94.4	89.8	92.1	89.7
1898	95.9	89.7	96.1	94.4	93.4	95.4	86.4	95.8	106.6	92.0	92.4	93.4
1899	96.2	86.3	100.0	98.3	96.7	105.0	114.7	105.8	111.3	95.1	97.7	101.7
1900	97.4	86.9	109.5	104.2	106.8	120.9	120.5	115.7	115.7	106.1	109.8	110.5
1901	97.9	89.4	116.9	105.9	101.0	119.5	111.9	116.7	115.2	110.9	107.4	108.5
1902	96.6	90.2	130.5	111.3	102.0	134.3	117.2	118.8	114.2	112.2	114.1	112.9
1903	97.5	90.9	118.8	107.1	106.6	149.3	117.6	121.4	112.6	113.0	113.6	113.6

The foregoing table indicates, with regard to all commodities, that the prices in 1903 averaged 13.6 per cent higher than the average prices of the period from 1890 to 1899, inclusive, and that from 1899 to 1903 there was an increase of 11.7 per cent. It also shows that during 1903 rates for railway passenger service were 2.5 per cent lower than the average of 1890 to 1899, and those for railway freight service 9.1 per cent lower. From 1899 to 1903, while the general average of commodity prices rose 11.7 per cent, railway passenger rates rose 1.4 per cent and freight rates rose 5.3 per cent. In other words, the amount obtained for selling the same quantities of commodities in general would buy more transportation of either freight or passengers in 1903 than it would in 1899, or, to reverse the form of the statement, a particular amount of railway service would buy less in commodities in 1903 than in 1899. The following table shows com-

parisons for each of the different groups of commodities according to the classification adopted by Colonel Wright:

Comparisons of index numbers—Average rates and prices of the years 1890 to 1899, inclusive.

Items.	Year.	Year.	Increase.
Railway rates:	*Per cent.*	*Per cent.*	*Per cent.*
Passenger	96.2	97.5	1.35
Freight	86.3	90.9	5.33
Wholesale prices:			
Farm products	100.0	118.8	18.80
Food, etc	98.3	107.1	8.95
Clothes and clothing	96.7	106.6	10.24
Fuel and lighting	105.0	149.3	42.19
Metals and implements	114.7	117.6	2.53
Lumber and building materials	105.8	121.4	14.74
Drugs and chemicals	111.3	112.6	1.17
House-furnishing goods	95.1	113.0	18.82
Miscellaneous articles	97.7	113.6	16.27
All commodities	101.7	113.6	11.70

As this subject is important enough to justify going further into details, I introduce a table showing comparisons similar to those in the foregoing and based upon specific commodities instead of classes of commodities, the data for prices being from pages 636 et seq. of the Eighteenth Annual Report of Commissioner of Labor Wright:

	Index numbers.		Increase.
	1899.	1903.	
Rates:			*Per cent.*
Per passenger mile	96.2	97.5	1.35
Per freight ton-mile	86.3	90.9	5.33
Prices:			
Apples, evaporated	99.5	100.8	1.31
Beans, dry	99.7	118.1	18.46
Beef, fresh, roasts, and stews	103.7	113.1	9.06
Beef, fresh, steaks	103.9	112.9	8.66
Beef, salt	103.2	108.8	5.43
Bread, wheat	99.6	100.2	.60
Butter	97.7	110.8	13.41
Cheese	102.4	109.4	6.81
Chickens	101.8	118.5	16.40
Coffee	90.5	89.3	[a] 1.33
Corn meal	95.1	120.7	26.92
Eggs	101.1	125.3	23.94
Fish, fresh	100.2	107.3	7.09
Fish, salt	100.2	108.4	8.18
Flour, wheat	94.6	101.2	6.98
Lard	97.1	126.7	30.48
Milk, fresh	98.9	105.8	6.98
Molasses	98.2	103.8	5.70
Mutton and lamb	102.6	112.6	9.75
Pork, fresh	101.7	127.0	24.89
Pork, salt, bacon	102.9	139.8	35.86
Pork, salt, dry or pickled	101.8	129.0	26.72
Pork, salt, ham	99.2	121.3	22.28
Potatoes, Irish	96.1	114.8	19.46
Prunes	85.1	80.2	[a] 5.76
Rice	102.4	103.9	1.46
Sugar	101.7	96.1	[a] 5.51
Tea	104.4	106.0	1.53
Veal	103.7	114.9	10.80
Vinegar	98.3	99.1	.81

[a] Decrease.

An examination of the foregoing table shows that it includes index numbers based upon price quotations representing 30 specific commodities, and that of these 30 commodities 24 advanced more rapidly

between 1899 and 1903 than railway passenger charges, while 22 advanced more rapidly than railway freight rates.

The most valuable index numbers compiled in the United States by private statisticians are those regularly published in Dun's Review. These figures aim to show the specific cost at different periods of the average quantity of commodities of different classes required for one year's consumption by the average inhabitant of the United States. From these figures it appears that the wholesale cost of commodities required by the average citizen was, at the prices of July 1, 1887, $85.23, while at those of July 1, 1903, it was $99.46. These figures are regarded as of sufficient importance by the statistician in charge of the Bureau of Statistics of the Department of Commerce and Labor to be repeated in his monthly reports. In the following table I have shown all of the index numbers compiled for Dun's Review for July 1 of each year from 1899 to 1903, inclusive:

Dun's index numbers.

[From Monthly Summary of Commerce and Finance of the United States, published by the Bureau of Statistics of the Department of Commerce and Labor, for September, 1904, pages 1751–1752.]

On July 1—	Bread-stuffs.	Meats.	Dairy and garden.	Other food.	Cloth-ing.	Metals.	Miscel-laneous.	Total.
1899	$18,488	$7,988	$10,974	$9,157	$15,021	$15,635	$12,969	$85,227
1900	14,898	8,906	10,901	9,482	16,324	14,834	16,070	91,415
1901	14,904	9,430	11,030	9,086	15,098	15,344	16,617	91,509
1902	20,534	11,628	12,557	8,748	14,533	16,084	16,826	101,910
1903	17,473	9,269	13,083	9,186	17,136	16,544	16,765	99,456

It may be assumed for the purposes of calculation that in each of the items of the foregoing table 10 per cent represented the cost, in 1899, of the railway transportation necessarily involved in placing the goods at the locations where they were required for consumption. Assuming that this was true in 1899, and that the same volume of each class of commodities required, at the higher prices and the, nominally, somewhat higher railway rates of the succeeding years, precisely the same quantity of transportation, I have shown in the table which I shall now introduce the proportion which the cost of the same amount of transportation bore to the cost of the same quantity of commodities in each later year.

Percentage of per capita cost required for transportation.

Year.	Bread-stuffs.	Meats.	Dairy and garden.	Other food.	Cloth-ing.	Metals.	Miscel-laneous.	Total.
1899	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00
1900	9.12	9.03	10.16	9.73	9.25	10.58	8.15	9.38
1901	9.38	8.78	10.33	10.44	10.29	10.53	8.10	9.64
1902	6.87	7.18	9.16	10.95	10.10	10.14	8.08	8.74
1903	8.14	9.08	8.86	10.51	9.23	9.94	8.17	9.03

The foregoing table shows that the prices of the commodities represented increased so much more rapidly than railway rates that, if the quantity of transportation bore the same proportion to quantity of commodities in 1903 that it bore in 1899, the cost of transportation would have been but 9.03 per cent of the value of the commodities for every 10 per cent of that value which it cost in 1899.

It would be possible to make extended comparisons between the prices of particular commodities and the rates which they pay when shipped over the regular lines of traffic. I have attempted such a comparison in the case of wheat, using the farm prices reported by the United States Department of Agriculture (Yearbook, 1903, p. 601), and the average rates per bushel on wheat shipped from Chicago to New York over the all-rail routes shown in the Statistical Abstract for 1903 (pp. 403 to 409). These comparisons follow:

Wheat rates and prices.

Year.	Average farm price per bushel.	Average rate per bushel, Chicago to New York, all-rail.	Number of bushels transported from Chicago to New York for the price of 1 bushel.
	Cents.	*Cents.*	
1899	58.4	11.13	5.25
1900	61.9	9.08	6.82
1901	62.4	9.02	6.91
1902	63.0	8.75	7.20
1903	69.5	8.89	7.82

It appears from the foregoing that the price of wheat was lower in 1899 than in every one of the four years which followed, and that the railway rate charged for moving a bushel of wheat from Chicago to New York was higher in 1899 than in any succeeding year. Comparing farm prices with rates, it appears that 1 bushel in every 5¼ was required to pay the cost of transportation from Chicago to New York in 1899, while in 1903 1 bushel would pay the cost of transporting more than 7¾ bushels.

The following table, also based upon farm prices as shown in the Yearbook of the Department of Agriculture for the year 1903, shows the values per unit of different farm products and farm animals, and the amount of transportation, both passenger and freight, purchasable for a single unit of each:

Railway rates and farm prices.

Commodity.	Unit of measure.	Price per unit.		Miles of railway transportation purchasable for the price of 1 unit.					
				For 1 passenger.			For 1 ton of freight.		
		1899.	1903.	1899.	1903.	Increase.	1899.	1903.	Increase.
						Per cent.			*Per cent.*
Corn	Bushel	$0.303	$0.425	15	21	40.00	42	56	33.33
Wheat	do	.584	.695	30	35	16.67	81	91	12.35
Oats	do	.249	.341	13	17	30.77	34	45	32.35
Barley	do	.403	.456	20	23	15.00	56	60	7.44
Rye	do	.510	.545	26	27	3.85	70	71	1.43
Buckwheat	do	.557	.607	28	30	7.14	77	80	3.90
Potatoes	do	.390	.614	20	31	55.00	54	80	48.15
Hay	Ton	7.27	9.08	368	453	23.10	1,004	1,190	18.53
Horses	Each	37.40	67.93	1,891	3,386	79.06	5,166	8,903	72.34
Mules	do	44.96	78.88	2,273	3,932	72.99	6,210	10,338	66.47
Milch cows	do	29.06	29.21	1,499	1,456	(a)	4,097	3,828	(a)
Other cattle	do	22.79	16.32	1,152	814	(a)	3,148	2,139	(a)
Sheep	do	2.75	2.59	139	129	(a)	380	339	(a)
Hogs	do	4.40	6.15	222	307	30.29	608	806	32.57

a Decrease.

RAILWAY RATES AND WAGES.

Just as the receipts from railway service will purchase less of commodities, and just as commodities will purchase more railway service, changes in wages, taken in connection with changes in railway rates, have produced a condition by which the railways now have to perform more service in order to pay the average day's wages of their employees than they did at the average wages and rates of 1899; or, reversing the proposition, the average day's labor will now purchase more transportation than in 1899. The following table shows for different classes of railway employees, the number in each class, the total wages paid to that class in 1903, and the number of miles which a ton of freight had to be moved in 1899 and in 1903 in order to pay for one day's labor of each kind. The concluding column shows the increased percentage of service which had to be performed to pay for one day of each kind of labor.

Employees.	Number on June 30, 1903.	Total wages during 1903.	Ton-miles required to pay for 1 day's labor.		
			In 1899.	In 1903.	Increase.
					Per cent.
Station agents	34,892	$21,011,724	240	245	2.08
Engineers	52,993	64,178,825	514	529	2.33
Firemen	56,041	37,494,283	290	299	3.10
Conductors	39,741	39,932,537	432	443	2.55
Other trainmen	104,885	66,221,536	268	284	5.97
Machinists	44,819	33,414,954	318	328	3.80
Carpenters	56,470	35,526,545	280	287	2.50
Other shopmen	154,035	84,130,168	238	244	2.52
Section foremen	37,101	21,430,994	232	233	.43
Other trackmen	300,714	101,426,585	168	272	5.58
Telegraph operators and dispatchers	30,984	19,962,487	267	273	2.25
Employees, account floating equipment	7,949	6,032,789	261	277	6.13
All other employees and laborers	168,490	84,203,290	232	232	(a)
Total	1,069,591	$615,954,908			

a No change.

From the foregoing it appears that in order to pay for one day's labor on the part of the average station agent a ton of freight had to be carried 245 miles in 1903, as against 240 miles in 1899. The purchasing power of labor in general is indicated by the following table, in which the statistics of wages are from the reports of Commissioner of Labor Wright:

General wages and railway rates.

Occupation.	Wages per hour.		Miles of railway service purchasable with 1 hour's earnings.			
			For 1 passenger.		For 1 ton of freight.	
	1899.	1903.	1899.	1903.	1899.	1903.
	Cents.	*Cents.*				
Blacksmiths	27.37	29.62	13.3	14.6	36.4	38.6
Boiler makers	26.54	28.48	13.4	14.2	36.7	37.3
Bricklayers	45.97	54.71	23.2	27.3	63.5	71.7
Carpenters	28.39	35.94	14.4	17.9	39.2	47.1
Compositors	40.86	44.67	20.7	22.3	56.4	58.5
Hod carriers	25.18	28.03	12.7	14.3	34.8	37.5
Iron molders	25.63	30.36	13.0	15.1	35.5	39.8
Laborers, general	14.57	16.76	7.4	8.4	20.1	22.0
Machinists	24.17	27.09	12.2	13.5	33.4	35.5
Painters	28.92	34.50	14.6	17.2	39.9	45.2
Plumbers	36.84	43.71	18.6	21.8	50.9	57.3
Stonecutters	35.94	42.25	18.3	21.1	49.6	55.4
Stone masons	37.19	44.86	18.8	22.4	51.4	58.8

It appears from the foregoing that the average blacksmith earned 27.37 cents per hour in 1899 and 29.62 cents per hour in 1903. At the passenger rates of 1899 his hour's earnings in that year would buy 13.3 miles of railway transportation. In 1903, although passenger rates had slightly advanced, his earnings had advanced so much more rapidly that for an hour's labor he could obtain 14.8 miles of travel. At the freight rates of 1899 and the rates of wages then prevailing the average hour's earnings of the same blacksmith would have been sufficient to pay for carrying a ton of freight 36.4 miles, but at the wages and rates of 1903 his hour's labor would have paid for moving a ton 38.8 miles. Similar results are seen throughout the table; the increases in the purchasing power being sometimes much greater than those noted.

I submit to the gentlemen of the committee that the foregoing data, taken from Government reports of unimpeachable authority, prove that the advanced railway rates which have been so loudly exploited are increases in name only. What actually happened is that prices of commodities rose so rapidly and so greatly that it was absolutely necessary in order to avoid railway bankruptcy to adjust charges to the enhanced cost of labor and supplies. The adjustment was somewhat tardily undertaken and not until great losses had been sustained through the increased cost of nearly every item necessary to operation. When the changes were made they were made with a profound sense of the delicacy of the adjustment of business conditions to the charges established in the schedules, with full recognition of the wide acceptance of the theory that although the scheduled rates may be reduced they are unlikely ever to be increased. In spite of the pressure of increased wages and prices, the level of railway rates was not moved upward far enough to restore its old relation to the general level of either. In other words, the nominal advances in railway charges did not, on the whole, make up for more than a small and insignificant proportion of the advance in the cost of labor and supplies.

THE STABILITY OF THE TON-MILE UNIT.

So plainly was the fact just recited to be read in the statistics of average earnings per ton per mile compiled by the Commission itself that, in submitting to the Senate the report printed as Document No. 257, it attempted to discredit what has always been regarded as the most satisfactory available standard for measuring the trend of rates. Therefore we find it asserted in the report that—

> It may be said that there is a constant tendency toward an increase in the percentage of the tonnage of low-grade freight, so that if there had been no advances in rates or classification since the year ending June 30, 1899, it is safe to say that the average rate per ton for each of the subsequent years would have been somewhat less than for that year.

In other words, the Commission believes that the change in the character of the traffic carried between 1899 and 1903 was such that had every rate schedule remained as it was at the beginning of the period the average representing receipts per ton per mile would have declined. This contention is important if it is true; if it is untrue its fallacy ought to be exposed. Its weakness will be apparent at once to anyone at all conversant with railroad affairs and industrial

conditions. The Commission does not say that the percentage of low-class freight is higher than it was twenty-five or thirty years ago. That might raise a more serious question. But the statement is the much more limited one, that "since the year ending June 30, 1899," there has been "a constant tendency" toward an increase in the percentage of low-grade freight, with the result that "if there had been no advances in rates or classification" the average rate per ton-mile "for each of the years" subsequent to 1899 "would have been somewhat less than for that year."

The question therefore arises, what was going on in business affairs in the four years from 1899 to 1903 that there should have been "a constant tendency toward an increase in the percentage" of low-grade freight each year? The period was one of unprecedented industrial activity, and the increase in the quantity of low-grade freight was unquestionably of really noteworthy dimensions. But it by no means follows that the ratio of low-grade freight to the total tonnage was increased. Low-grade traffic has long formed a preponderating proportion of the whole, and hence even to maintain the old ratio these classes of tonnage must increase very much faster in quantity than other classes. It is this expansion in the quantity of low-class tonnage that is most manifest to the superficial.

Obviously an increase in the percentage of low-class freight would involve a reduction in the percentage of high-class freight. As it happens, circumstances and conditions do not afford warrant for the belief in such a reduction. High-class freight consists of merchandise, manufactures, and miscellaneous articles and commodities of considerable value in regard to bulk, and therefore able to stand high rates, since the transportation charge, even at such rates, can constitute only a small part of the cost of the goods at point of delivery. Dry goods is one of the items of high-class freight. Manufactures and finished goods generaly fall in the same category. What controls the volume of the shipments of these goods? The demand, of course, and this demand naturally varies according to the consumptive requirements of the population. These requirements in turn are dependent upon business conditions—upon whether labor is fully and profitably employed and upon whether manufacturers, merchants, and producers are making money.

During the four years from 1899 to 1903 all classes of the population were extremely prosperous. Wage-earners had no difficulty in finding employment and many worked overtime. Their rates of pay were increased again and again—in fact, they could command their own terms. Manufacturers turned out more goods than in any previous similar period in their business experience. Merchants and traders increased their sales correspondingly, while the farming community encountered no setback in its long era of good times. In brief, everyone was in a condition to buy on an extensive scale. In such a state of things the percentage of high-class freight shipped over the railroads could not decrease. Is there not rather every reason for thinking that it would necessarily increase?

These are general observations, but they find full support in a study of the statistics available for that purpose. Of all traffic changes, those in the territorial distribution of tonnage movement are most accurately and comprehensively portrayed by published statistics. The Commission's Statistician long ago adopted a geographical classification of the data which he compiles, and the

averages in which his conclusions are expressed are presented for each of ten great divisions of the country as well as for the United States as an whole. In 1899 there were three of these divisions in which the average receipts per ton per mile were lower than 6 mills, the range being from 5.29 mills in Group III to 5.94 mills in Group IV. The lowest average for any other group was 8.07 mills and the highest 11.36 mills. The average for the entire country was 7.24 mills, the lowest of any year in the history of the American railway system. Figures for the year 1903 show that the average revenue per ton of freight per mile for the entire country was 7.63 mills, an advance over 1899 of not quite four-tenths of a mill.

In 1899 55.45 per cent of the traffic movement of the United States was within the three groups where rates were lowest, none of which had an average of receipts per ton per mile as high as 6 mills. From 1899 to 1903, the ton mileage of the country increased 40.07 per cent, and of this great increase 57.37 went to the groups in which the average in 1899 exceeded 8 mills. The business of the three groups having low rates grew but 30.81 per cent, while that of the seven higher groups grew very much more rapidly, or actually 51.60 per cent. Thus changes in the geographical distribution of traffic, which can easily be traced in the Commission's reports, would have resulted in a higher instead of a lower average rate per ton per mile "had there been no advance in rates or classification."

The following table shows the ton mileage of each group for the years 1899 and 1903, with the percentages of increase.

Ton-mileage.

Group	1899.	1903.	Increase.
I	4,111,621,534	5,114,609,555	24.39
II	37,462,483,496	47,127,274,771	25.80
III	25,075,322,381	34,804,198,236	28.80
IV	6,030,279,854	7,760,464,917	28.69
V	8,547,922,813	13,174,890,160	54.13
VI	22,311,007,477	32,535,907,493	45.83
VII	3,467,159,799	5,842,151,338	68.50
VIII	8,080,198,237	12,541,491,467	55.21
IX	3,740,142,138	5,595,345,082	49.60
X	4,841,029,424	8,724,936,974	80.23
Total	123,667,257,153	173,221,278,993	40.07

The precise influence of these changes in the geographical distribution of tonnage can be measured by using the traffic movement of each group in 1903 as a "weight" to be applied to the average ton-mile revenue of the same group in 1899, and thus obtaining a weighted average. Such a calculation is shown below:

Group	Average receipts per ton per mile, 1899.	Ton-mileage, 1903.	Products.
I	11.23	5,114,609,555	$57,437,065
II	5.82	47,127,274,771	274,280,739
III	5.29	34,804,198,236	184,114,209
IV	5.94	7,760,464,917	46,007,162
V	8.07	13,174,890,160	106,321,364
VI	8.21	32,535,907,493	267,119,801
VII	11.01	5,842,151,338	64,322,086
VIII	9.68	12,541,491,467	121,401,637
IX	10.65	5,595,354,082	59,590,521
X	11.36	8,724,936,974	99,115,284
United States	7.24	173,221,278,993	$1,279,799,868

In order to ascertain from the foregoing what would have been the effect of the changed geographical distribution of tonnage had there been no changes in average rates within the different groups, it is necessary to divide the total of the last column by the total of that directly at the left. The quotient thus obtained is 7.39 mills, and the calculation shows that 0.15 mill of the rise of 0.39 mill from 1899 to 1903, or 38.46 per cent, is accounted for by mere changes in the geographical distribution of traffic.

Beyond the changed distribution of traffic there is, however, a great deal of evidence that the ton-mile unit is moving upward rather than downward in quality. The opinion to the contrary is based primarily upon the importance of mine products in the aggregate tonnage of the country. The notion that this great class, which represented 51.47 per cent of the country's railway traffic in 1899 and 51.56 per cent in 1903, is carried at the lowest rates is not supported by the facts. One-fifth of it is anthracite coal, which is charged for at rates that considerably exceed the general average of the country, while more than a quarter moves in those portions of the country comprised in Groups VI, VII, VIII, IX, and X, in which traffic conditions still require rates considerably above the average.

Generally speaking, the classes of traffic which move at the lowest rates are farm products, including both vegetable and animal products in that designation. This class of traffic has not grown, and in the nature of things could not have grown as rapidly as others. "Products of agriculture" supplied 11.33 per cent of the railway tonnage of 1899 and but 9.56 per cent in 1903, while during the same years the proportions supplied by "products of animals" fell off from 3.12 per cent to 2.63 per cent. Manufactured articles, which made up but 13.45 per cent of all tonnage in 1899 and moved at relatively high rates, supplied 14.39 per cent of the total in 1903. These data clearly tend toward a conclusion diametrically opposed to that quoted from the Commission's report.

Although detailed statistics are not available, the well-known fact that west-bound traffic has since 1899 grown so as to constitute an unprecedentedly heavy proportion of the total is also strong evidence in the same direction. East-bound movement is commonly of low-grade freight, paying relatively low rates; west-bound movement is of higher grade and pays relatively higher rates. Not only is the contention of the Commission "not proven," but it is clear that the ton-mile unit was of higher average quality in 1903 than in 1899.

SINGULAR OMISSIONS AND STRANGE INCLUSIONS.

Before parting with Document No. 257 it is worth while to note that while ostensibly a response to a resolution of the Senate it did not respond to any resolution ever adopted, but did respond to one which failed of adoption. Important facts called for in the resolution which was passed were omitted, while, as has been shown, improbable estimates were resorted to in order to include matters concerning which no inquiry had been addressed to the Commission.

The resolution which was introduced but never adopted and that

which was passed appear in parallel columns below, the former being correctly designated as the one responded to by the Commission:

NOT ADOPTED.	ADOPTED.
The resolution which was answered.	*The resolution which was not answered.*
Resolved, That the Interstate Commerce Commission is hereby directed to furnish the Senate, as speedily as may be practicable, a report showing the principal changes in railway tariff rates, whether resulting from the adoption of new rates or the amendment of freight classifications, and an estimate of the effect of such changes upon the revenues of railway corporations in the United States during each of the fiscal years ending June 30, 1900, 1901, 1902, and 1903, as compared with the revenues that would have been derived by them under the rates and freight classifications in force during the fiscal year ending June 30, 1899. *And that said Commission also include in such report such estimate as may be practicable of the effect of such changes in rates and freight classifications upon the revenues of said railway corporations derived from the transportation of leading commodities, for example, iron and steel articles, coal, lumber, grain, flour, hay, and sugar, during the periods above mentioned.*	*Resolved*, That the Interstate Commerce Commission is hereby directed to furnish the Senate, as speedily as may be practicable, a report showing the principal changes in railway tariff rates, whether resulting from the adoption of new rates or the amendment of freight classifications, and an estimate of the effect of such changes upon the *gross and net* revenues of railway corporations in the United States during each of the fiscal years ending June 30, 1900, 1901, 1902, and 1903, as compared with the *gross and net* revenues that would have been derived by them under the rates and freight classifications in force during the fiscal year ending June 30, 1899; *and also report the changes in cost of operation and maintenance of said railways for said years.*

The words in italics in the resolution that was not adopted, as printed above, were omitted in the resolution as finally passed and those printed in italics in the latter were not in the former. Yet Document No. 257 replies to all the ultimately omitted inquiries of the unadopted resolution and affords no answer to the inquiries added to the resolution that passed. The Commission's "Preliminary report on the income account of railways," for the fiscal year 1903, is dated December 12, 1903, and shows that the operating expenses of "about 98 per cent" of the railway mileage of the country for the fiscal year 1903 was $1,248,520,483, or $391,551,484 more than the cost of operating all the railways in 1899. Yet the Commission, while inserting in Document No. 257, which is dated March 24, 1904, figures for freight tonnage and earnings which cover but 98 per cent of the existing mileage, failed to include the expenses of operation for 1903, asked for by the resolution, and explained the omission by the statement that they had "not yet been compiled."

INCREASED USE OF RAILWAY TRANSPORTATION.

In my opinion, the best evidence, however, that railway rates are not exorbitant is the rapidly increasing use of railway transportation, an increase which is not understood unless it is borne in mind that railway service enters more largely into the economic life of the people of the United States than into that of the people of any other

nation. This was true in the year 1880, when the number of tons of freight carried one mile per capita of population was only 645, yet since that time the traffic movement per head of population has increased more than threefold. In 1903 no less than 2,155 tons were carried one mile per capita of population. These data are shown in the following table:

Railway services.

Year.	Population.	Passengers carried 1 mile.	Freight carried 1 mile.	Passenger mileage per capita.	Ton mileage per capita.
		Number	*Tons.*		
1880	50,155,783	5,740,112,502	32,348,846,698	114	645
1890	62,622,250	11,847,785,617	76,207,047,298	191	1,217
1895	69,[illegible]43,000	12,188,446,271	85,227,515,891	177	1,234
1897	71,[illegible]	12,250,939,647	95,139,022,225	171	1,327
1898	73,[illegible]	13,679,930,004	114,077,576,305	183	1,561
1899	74,431,000	14,591,327,613	123,667,257,153	196	1,661
1900	76,303,387	16,039,007,215	141,599,157,270	210	1,856
1901	77,647,000	17,353,588,444	147,077,136,040	223	1,894
1902	79,[illegible]	19,689,937,620	157,289,370,053	249	1,991
1903	80,372,000	20,915,763,881	173,221,278,993	260	2,155

Significant as the increases shown in the foregoing are, their meaning will be better apprehended if attention is called to the fact that this growth in the volume of railway transportation purchased has outstripped growth in almost every other economic factor in our national life. The following table shows, for several of the more important elements of the industrial life of the United States, the volume utilized in the year 1903 as compared with the years 1880, 1890, and 1900:

Percentages of increase.

Items.	The year 1903 compared with the year—		
	1880.	1890.	1900.
Passengers carried 1 mile	264	77	30
Freight, tons carried 1 mile	435	127	22
Population	60	28	5
Money, amount in circulation	143	66	15
National banks, capital of	63	16	20
Government receipts, net ordinary	68	39	(a)
Government expenditures, net ordinary	182	83	7
Exports of merchandise, value	70	66	2
Imports of merchandise, value	54	30	21
Foreign trade, total value	63	48	9
Wheat produced, bushels	28	60	22
Corn produced, bushels	31	51	7
Cotton produced, bales	86	47	14
American ships in foreign trade, tonnage	(a)	(a)	8
American ships in domestic trade, tonnage	91	49	20
American ships on Great Lakes, tonnage	214	79	22
Post-offices, number of	73	19	(a)
Telegrams sent, number of	218	44	15
Newspapers, number of	111	21	(a)
Patents issued, number of	127	21	20

a Decrease.

The foregoing, which is based upon data reported by the Bureau of Statistics of the Department of Commerce and Labor, shows, among other things, that in 1903 the people of the United States pur-

chased 127 per cent more railway freight service than in 1890. Between the same years the amount of money in circulation increased 66 per cent; the capital of national banks, 16 per cent; Government expenditures, 83 per cent; the value of foreign trade, 48 per cent; the number of bushels of wheat produced, 60 per cent, and the tonnage of American ships on the Great Lakes, 79 per cent.

REBATES ELIMINATED.

The second allegation in support of the proposed legislation, that there is unjust discrimination among the purchasers of transportation, is seriously confused by the misleading use of the word "rebates." There is nothing in the measure which passed the House of Representatives that would affect rebates except as it would increase the incentive to cut below the schedule rates—a result that is extremely probable should such a measure be enacted. A rebate, using the word in its broadest sense, is any device by which one shipper of freight is permitted to receive service for a smaller payment than is exacted from some other shipper for a like and contemporaneous service.

THE LAW AGAINST REBATES.

All devices of this sort are absolutely prohibited by Federal law, and have been so prohibited for nearly eighteen years. The language of the statute is broad enough to cover any conceivable device, whether by underbilling, underweighing, false classification, excessive payments for the use of shippers' cars, unreasonable allowances to terminal railways or otherwise. The law on this subject was materially strengthened by the Elkins act, approved on February 19, 1903, which reads, in part, as follows:

> * * * and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereto, whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced.

Violation of the foregoing is a misdemeanor, punishable by a fine, which may not be less than $1,000 nor more than $20,000. In addition to these penalties the statute places in the hands of the Interstate Commerce Commission a most powerful instrument for the enforcement of the laws by providing:

> That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States, sitting in equity, having jurisdiction; * * * whereupon it shall be the duty of the court summarily to inquire into the circumstances upon such notice and in such manner as the court shall direct, and without the formal pleadings and proceedings applicable to ordinary suits in equity, * * * and upon being satisfied of the truth of the allegations of said petition, said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process. * * *

SUCCESSFUL OPERATION OF ELKINS LAW.

Thus "government by injunction" has been invoked in aid of the suppression of rebates. In his annual message to Congress of a year ago (transmitted on December 7, 1903), the President declared concerning this legislation:

> The Congress * * * has secured equal treatment to all producers in the transportation of their goods, thus taking a long stride forward in making effective the work of the Interstate Commerce Commission.

The testimony of the Interstate Commerce Commission, as given in the annual report which it submitted to Congress on December 17, 1904, is that—

> As to that branch of regulation which deals with the publication and invariable application of tariff rates, the act as amended by the Elkins law of February 19, 1903, appears to be operating successfully as applied to carriers subject to its provisions. * * *

Mr. E. P. Bacon, who is the chief legislative agent of those who wish to confer rate-making authority upon the Commission, on December 9, 1904, while addressing the Committee on Interstate and Foreign Commerce of the House of Representatives, was asked whether he had "heard of any proceedings against the railroads in the matter of rebates." He replied as follows:

> I have not heard of any occasion for proceedings. It [meaning the Elkins law of February 19, 1903] has been so generally observed by the railways since its passage that there has been no occasion for prosecution.

During the same hearing, and also with reference to the Elkins Act, Mr. Bacon said:

> That * * * has been productive of immense good. It has been surprising, in fact, to me to what an extent that bill has been complied with by the transportation companies, and in fact our committee has been unable to trace any violation of that bill of any consequence. There have been some devices for defeating it by the establishment of sidetracks, which are called railroads, so that on a division with the railroads they get an undue proportion, and by that means obtaining personal discriminations, personal favors, and personal advantages. But the Commission, after hearing some cases in that direction, have already taken steps to prevent that evasion of the law.

By whatever device accomplished, a rebate is vicious in principle and demoralizing in practice. It is fortunate that it offends the American spirit of fairness; that it is so wholly obnoxious to the people that its condemnation is as certain and as general as it deserves. Rebates from interstate freight charges have been illegal for but eighteen years, and the laws against them have been strengthened from time to time as opportunities for their perfection have been indicated by experience. If they are not as effective as the laws against burglary and arson, the fact may be set down as, principally, evidence of the slow growth of higher moral ideals amidst the struggles of the market place.

Further strengthening of these laws should be welcomed and will be welcomed whenever it is clear that the changes suggested are likely to produce the results desired.

IMPORTANCE OF CLEAR THINKING.

It would be most unfortunate, however, if the improper and inappropriate use of a term of such sinister suggestion as the word rebate

should result in the enactment of unwise laws which could have no relation or application to the obnoxious practice to which that term properly applies.

THE ADJUSTMENT OF TARIFF RATES.

The effort to discover genuine substance behind the demand for legislation providing new and extraordinary means for the revision of the rate schedules requires lenses of great magnifying power. Of course there are the perennial, natural, and desirable controversies among localities which would like statutory aid in their efforts to supplant their commercial rivals, but complaint of this sort scarcely supplies an adequate measure of the real situation. A better one is to be found in the records of the Commission itself. The Commission has admitted that many of the complaints which it receives are unreasonable and baseless, and there are doubtless many unreasonable complaints which affect the public sentiment of particular localities that are never brought to its official attention. Possibly there may be occasional grounds for reasonable complaints which are not disclosed by its records, but it can scarcely be contended that it has not, in the eighteen years of its existence, gathered together substantially all of the serious controversies between the purchasers of railway transportation and the railway corporations. We may turn, then, to these records and derive from them an approximate measure of the evils which constitute the only basis for the radical legislative proposals now under consideration.

The report submitted to Congress by the Commission at the close of the last calendar year showed that from the creation of the Commission, on February 4, 1887, to December, 1904, it had received all told, precisely 4,012 complaints against railway rates and railway methods. This is an average of something over 200 every year, and perhaps might be sufficient, even in connection with an industry serving 85,000,000 people and requiring the investment of eleven billions of dollars, to justify somewhat radical legislation if it were true that under existing law satisfactory solutions had not in most cases been attainable. But 3,223 of these complaints are classified by the Commission as "informal," and were settled under the existing law by its friendly mediation. In other words, in all these cases no formal complaint was received, no formal proceedings were instituted, no report and opinion was filed, no order issued, no litigation ensued; yet every one of them was settled to the mutual satisfaction of those concerned. The Commission has never seen fit to report the number of these cases in which the settlement which it secured was in the form of a concession by the carrier, or the number in which the person or persons complaining were finally satisfied that no concession ought to be made.

The remaining 789 cases have been formally presented to the Commission, but only 359 of them have been pressed to final determination by that body. It is impossible to state just how many are still pending, but certainly the number does not exceed 10 per cent, and there are probably less than 70 cases now pending. In other words, almost half of the 789 formal complaints have been settled by agreement between the parties or by the withdrawal of the complaint before the

Commission has had time to investigate and decide. Of the 359 cases which the Commission has decided, frequently considering two or more of them together and in its whole history having rendered but 297 formal decisions, 194, or scarcely more than one-half of the total, have been decided in favor of the complainants. The balance have been dismissed because there was no legal ground for complaint. In the 194 cases decided in favor of the complainants the Commission has with a few exceptions issued formal orders requiring the carriers to change their rates or to modify their regulations. Probably about 65 per cent of these orders have been promptly and voluntarily obeyed by the carriers against which they were directed. A report, submitted to the United States Senate by the Commission on December 21, 1896 (Senate Doc. No. 30, 54th Cong., 2d sess.), shows the action taken in 107 instances, in which the decision of the Commission was more or less favorable to the complainants. From this report it appears that in 58 of the 107 cases included there was complete, voluntary obedience to the Commission's order. In 11 more there was voluntary, partial obedience, while in another case the Commission reports that "some changes" were made. It is to be observed concerning these 12 cases that the degree of obedience was at least sufficient to prevent further action on the part of the Commission or the complainants. It appears, therefore, that in 107 cases there were only 37 in which the defendants declined substantially to comply with the Commission's recommendations. The facts concerning these cases merit and will receive attention hereafter.

Information on this subject is brought to a later date by the statement supplied to Senator Kean by the Commission, and printed on pages 68 and 69 of the "Hearings before the Committee on Interstate Commerce of the Senate," of April 19, 1905. This statement relates to 60 cases decided between December 3, 1887, and June 25, 1904, "in which the Commission found rates complained of to be unreasonable and ordered them to be discontinued." It shows that in 26 cases the orders of the Commission were completely obeyed and that in 13 cases they were partially obeyed. As no suits were brought in any of the cases in which the obedience is described as "partial," the action may be presumed to have been satisfactory to the complainants. Of the 21 cases in which the orders of the Commission were not obeyed, suits had been brought, at the date on which the statement was made, in 19, and in 16 of these the courts had decided that there were no lawful orders, that the pseudo orders issued had no legal force, and, in effect, that they ought not to have been obeyed. The decision in the Freight Bureau cases (167 U. S., 479), which the Commission always refers to as having established the interpretation of the law to the effect that the Commission has no rate-making power (although this was in fact clearly decided more than a year before in the Social Circle case (162 U. S., 184, decided on March 30, 1896), was decided on May 27, 1897. The following table shows that there has been more frequent and more complete compliance with the Commission's orders since that date than before.

Orders requiring changes in rates.

Issued—	Number issued.	Number completely obeyed.	Number partially obeyed.	Percentage wholly or partly obeyed.
Before May 27, 1897	41	15	11	63.41
After May 27, 1897	19	11	2	68.42
Total	60	26	13	65.00

Senator NEWLANDS. You think the restriction of their powers, then, by the Supreme Court rather improves their efficiency?

Mr. NEWCOMB. I think they are mistaken. I would not say the difference is important enough to justify such a conclusion as that, but they must be mistaken in their statement, so frequently made, that since that decision was rendered the orders have not been obeyed.

Senator FORAKER. How does the number of their orders made since the Maximum Rate case decision compare with the same period of time prior to that?

Mr. NEWCOMB. There were 41 orders prior to that decision, and I have 19 since. The period since covered by the statement must be about seven years, and the period previous to that was about ten years.

Senator CLAPP. Those 19 are not all orders that went directly to reducing rates. There were 13 that went direct to reducing rates.

Mr. NEWCOMB. Those are the orders that they enumerate in their statement to Senator Kean. I think I excluded all the cases where they did not make a positive order, and I took their list.

Senator NEWLANDS. Do you mean to say that out of those 4,000 cases there were only 40 or more prior to the decision of the Maximum Rate case and 19 since in which the Commission has made positive orders?

Mr. NEWCOMB. No, sir; these are the only ones in which the orders related to rates. Senator Clapp has suggested that the list is not actually accurate.

Senator CLAPP. I was simply stating Mr. Hines's statement, who furnishes a complete analysis.

Mr. NEWCOMB. Mr. Hines is a very high authority on that subject, and I think is right. They were asked merely to give a list of the orders in which they had directed changes in rates and to show what had been done. There were three or four cases included where they said they had not made positive orders and I excluded those, but I did not make any further analysis of the list than that.

Senator NEWLANDS. But out of that whole 4,000 cases, I understand that less than 100 have covered questions of rates. Is that it?

Mr. NEWCOMB. No; less than 100 in which they have decided in favor of the complainants on contested cases. Of the 4,000 cases quite a large number are informal cases, and we don't know anything about what has been done with them. We don't know how they are settled. We only know what subject-matters they have covered. There have been about 800 contested cases, and only 194 cases in which they have decided in favor of the complainant, and out of those I suppose this list of 100 covers all that actually applied to rates. The number of cases that have gone to the courts is just about 1.1 per cent of the total number of cases they have heard.

Senator CLAPP. You will find that statement of Mr. Hines's on page 7 of the sixth day of the testimony.

Mr. NEWCOMB. It does not seem to me that that in anyway modifies the force of the statements from the analysis of those decisions that more of their orders have been obeyed since 1897 than prior to that time. The opposite statement has been repeated so often that I am afraid it is actually believed, and the facts are to the contrary.

Senator CLAPP. Following your line of discussion, he also shows that since 1897 since the maximum rate case was decided, that of the cases where the Commission actually dealt with the question of rates, and the decision of the Commission as to the unreasonableness of the existing rate was sustained either by adopting it or the court sustaining it, the carriers put into operation the suggested modified rate except in two cases.

Mr. NEWCOMB. I think that has been generally true, and in those cases, which are referred to in the last annual report of the Interstate Commerce Commission, very substantial reductions were made.

We come, therefore, to this conclusion: That out of about 4,000 complaints of one kind and another brought to the attention of the Commission, approximately 3,900 have been adequately and satisfactorily settled under the law as it exists to-day. Of the remaining 100 cases some are undoubtedly still pending, and if they shall be decided against the carriers it is reasonable to believe that in most cases the action recommended by the Commission will be promptly taken by the defendants. The traceable remainder amounts to precisely 45 cases in which the Commission has rendered decisions adverse to the railroads, which the latter have refused or neglected to obey. In these cases the Commission or some interested party has, in accordance with the procedure provided in the statute, sought the aid of the United States courts for the enforcement of the remedies prescribed by the Commission. These 45 cases constitute almost precisely 1.1 per cent of the total number of complaints which the Commission has received. Here, then, we have apparently put our finger upon the dimensions of the evil which it is proposed to remedy by conferring upon the political appointees of a partisan President power to write into every contract for transportation the most important item in that contract—the price for which the transportation is to be performed.

For the sake of 1.1 per cent of all the complaints received in connection with the greatest American industry save that of agriculture, for the sake of 45 cases in eighteen years of American industrial achievement, it is proposed to inject into American industry a new and an alien force and to deprive, by a single law, the shipper of the right to say how much he will pay and the carrier of the right to say how much he will receive. Small as the number seems, we have not yet, however, reduced to its actual insignificant minimum our measure of the slight real basis for the radical and drastic legislation which is proposed. Forty-five cases in which the railways have declined to obey the orders of the Commission have gone to the courts. Some of them have been withdrawn; some have been prosecuted with so little diligence by the complainant, usually the Commission, that for years they have remained undecided, and there are a few which have been so lately entered upon the dockets that there has not yet been time for their consideration and determination. The number of cases which have been decided is 34, and in only two of these has a

final decree enforcing the orders of the Commission been secured; in one other the Supreme Court decided to enforce a part of the Commission's order.

I am aware that in its response, dated May 1, 1905, to the Senate resolution of January 16, 1905, the Commission claims to have had its orders sustained by the courts in three cases in which it decided that rates were excessive and in eight cases in which it decided that they were unjustly discriminatory. In order to make up the eight cases, however, the Commission included in it the three cases given under the first head, so that the real total claimed is eight and not eleven. But this is not all. Five of the eight cases can not properly be counted at all. In four of them there were no court decisions at all, and in one other the decision was merely on a motion to dismiss, and the merits of the case were never subjected to judicial investigation. These cases are included by the Commission because the carriers defendant saw fit, while they were pending, to take action satisfactory to the complainants.

The absurdity of treating them as cases in which orders have been sustained by the courts is evident when it is noted that it resulted in including one order—that in the Colorado Fuel and Iron case—under both heads as having been both sustained and disapproved by the courts. In fact, this single order appears three times in the Commission's summary, and I can not discover why it did not appear four times, for as it was counted under the respective heads of "excessive rates" and "unjust discrimination" among the "sustained" orders it is difficult to see why the Commission thought it should be counted but once under "excessive rates" among the orders "not sustained." In fact, the only time this order was subjected to complete judicial scrutiny the final judgment of the Federal court was that it was not a lawful order.

The law of the land is that when the Commission has conducted a lawful investigation and issued a lawful order which has not been obeyed by the carrier or carriers defendant, it is the duty of the Federal court having jurisdiction to issue a decree commanding obedience. When suit is brought to enforce one of the Commission's orders there are only two questions before the court, and these are:

First. Has a lawful order been made by the Commission? and,

Second. Has the order been disobeyed?

If the answers to both questions are in the affirmative, no discretion and no latitude of action is left to the court. It must require, by a proper decree, prompt and complete obedience to the Commission's order, and that order the court can neither modify, alter, nor abate. Sixteen cases of this sort have been brought to the attention of the Supreme Court of the United States and 15 times that court has decided that the Commission has failed to make a lawful order and that consequently there was no order which the court could enforce. Eighteen cases, in addition to these, have been decided by the lower Federal courts and 16 of them adversely to the Commission.

If the Commission had, during the entire eighteen years of its existence, possessed every power which it is now proposed to confer upon it, not a single complaint of the 4,000 which has been filed with it would have been in any way affected by the difference in the law, except the 45, this insignificant 1.1 per cent of the total, which have finally resulted in litigation in the Federal courts; and it now appears

by the decisions of these courts that the Commission was wrong in at least 31 of the 34 cases which have been pressed to judicial determination. It is safe to assert that it was wrong also in every one of the cases which have been withdrawn or they would not have been withdrawn, and in those which have not been pressed with reasonable persistence, for otherwise they would have been pressed. In each of the cases in which the Commission decided wrongly, had a measure similar to the Esch-Townsend bill been a part of the law of the land, the carriers would have been compelled, for a considerable period, to submit to the unlawful orders of the Commission or to run the risk of punishment for disobedience, although, even under such a statute, the courts would undoubtedly have eventually determined precisely as they did determine under the law as it exists to-day.

What answer have the advocates of the radical measures now proposed to these statements? They have two:

One is that the Commission is notoriously impotent and powerless and that complaints are not freely brought before it because those who are aggrieved have no reason to expect redress at its hands. The inference is that if the powers which it now seeks were delegated to the Commission complaints would spring up upon every hand and that its work would rapidly multiply. This assumption is, however, refuted by the facts. For nearly ten years, according to its own statements, the Interstate Commerce Commission claimed to exercise every power which it now seeks. It asserted that there was an especial sanctity in its conclusions of fact which precluded their critical scrutiny by the courts asked to enforce its orders, and that it did have the right to name the rates which ought to be substituted for those which it condemned. Yet the average number of formal complaints annually received during this ten years was barely two-thirds of the number received last year; when the last three or four reports of the Commission had iterated and reiterated its discontent with the limitations upon its authority. The only explanation of this is that the shipping public apprehends better than the Commission the real power and influence which that body wields. In spite of repeated assertions of its lack of adequate authority by the Commission, those who complained to it must have realized that a body which in eighteen years has satisfactorily settled thirty-nine out of every forty complaints which have been addressed to it is not powerless.

The second attempted answer to those who recite the repeated reversals of the Commission by the courts is, in effect, that what the Commission has tried to accomplish ought to be accomplished, and that if the courts have properly construed the law, the law is wrong. This contention was recently stated with admirable clearness and conciseness by Mr. Commissioner Clements. Addressing the Committee on Interstate and Foreign Commerce of the House of Representatives, on January 25, 1905, he said:

> * * * It is not fair to array these cases here as cases in which the court, upon the facts, upon the merits and equities and justice of the case, has overturned the Commission 29 or 30 times out of 35, when in reality these cases went off solely upon construction of the law, which demonstrated vital defects in this regulating statute.

Now, the only way to answer this argument is to turn to the decisions themselves. A study of the opinions of the courts in the thirty-one reversals which the Commission has sustained affords little

support for the assumption that the conclusion would have been different in any one of them even had the Commission undeniably possessed the powers for which it now asks. With regard to many of them it is exceedingly difficult to see how any one who had given them careful study could reach the conclusion that they "went off solely upon construction of the law." This surely was not the reason for the reversal of the Commission in the San Bernardino case (50 Fed. Rep., 295), in which the court said that—

> The facts * * * are widely different from those set out in the report of the Commission.

Nor in the Coxe case (74 Fed. Rep., 784), in which the court expressed radical disagreement with the Commission as to the facts involved, saying:

> The Commission's estimate * * * rests upon an erroneous principle and is unreliable.

In many other cases, including the very recent Kearney case, it is clear that there would have been the same decision even under such a statute as that proposed. In the Kearney case the court said:

> It is to be observed further that while there is no finding of fact in this case upon which the order of the Commission can be based, the evidence itself is not believd to be sufficient to support the order. The evidence before the court, on the contrary, appears to be sufficient to support a finding that the Kearney rate in and of itself was and is reasonable.

Clearly, then, the assertion so frequently made by those who desire radical legislation, that the frequent disapproval of the conclusions of the Commission by the Federal courts has been wholly due to the fact that the Commission's interpretations of the law have not had the sanction of the courts is unwarranted. While it is perfectly true that in the natural desire to enlarge the scope of its authority the Commission has often reached conclusions of law which the courts have declared to be erroneous, it is equally true that its determinations of facts and the conclusions which it has drawn from them have frequently received judicial condemnation. A study of the decisions of the courts with a view of determining whether, on the whole, the results of the litigation in the several cases have been such as tend toward the establishment and perpetuation of just relations between shippers and carriers affords a complete refutation to the argument so often advanced that the Commission has been right, that the law is wrong, and that therefore the law ought to be modified.

PASSENGER TRAFFIC CASES.

Passenger rates have been the subject of controversy in but two of the cases in which the courts have been appealed to for the enforcement of the Commission's orders. One of these cases was that of a negro named Heard, who obtained an order from the Commission directing the Georgia Railroad to discontinue practices connected with the use of so-called "Jim Crow" cars, which were regarded as unjustly discriminating against the complainant. This case was withdrawn before decision. The other passenger rate case is known as the "Party Rate" case. It arose through the desire of one railway company to be relieved from one phase of its competition with a rival carrier. The order of the Commission would have mitigated the competition in the desired degree had not the court declined to

enforce it. Whether the outcome of this case resulted in substantial justice may be inferred from the statement of the court that in making these "party rates" the defendant was merely putting into practice a "reasonable and well settled business practice;" that its revenues would "be seriously impaired" if the practice were discontinued, and that this practice afforded "convenience and benefit" to a portion of the public.

CARRIERS' METHODS.

Three of the cases which have gone to the courts have related to transportation practices rather than to rates. One of these, the Orange Routing case, appears to have been due to an effort on the part of the complainants to secure the continuance of illegal and secret deviations from the published rate schedules, by parties other than the defendants, which amounted to rebates. The Commission decided in favor of the complainants, but there was a strong dissenting opinion from the chairman. The circuit court has decided this case in favor of the enforcement of the Commission's order, but an appeal is now pending. Another case of this character, the Cartago case, was prompted by the desire of one railway to weaken a competitor. In this effort the carrier was able to secure the cooperation of the Commission, but again its decision did not survive judicial scrutiny. The circuit court called attention to the admission of the counsel for the complainants before the Commission, that the complainant had no real grievance but had been instigated in making complaint by a railway which was paying the expenses of the litigation, and the circuit court of appeals noted that the effect of enforcing the order would practically deprive the defendant of its ability to compete with the rival which was responsible for the complaint. Another of these cases was brought at the instance of a railway which desired to be relieved from a contract that it had entered into with other railways, and to force the latter to provide, at their own expense, facilities for bringing about that result. The circuit court, which refused to enforce the Commission's order, declared this to be the fact, and asserted that the interstate-commerce law "was never intended to invade the domain of private contracts between common carriers, which were valid when made, and are not in conflict with the provisions of the law."

LONG AND SHORT HAUL CASES.

The remaining cases in which appeal has been made to the courts have been those in which the Commission has attempted to control adjustments among freight rates. Roughly speaking, these are of two classes: Those in which the whole question has been that of absolute or relative reasonableness under the first or third sections of the Act, and those in which the fourth, or long and short haul section, has been involved. Of the long and short haul cases, which considerably exceed the others in number, it may be said that, if in any of them there were unjust relations which might have been relieved through the lawful action of the Commission, that body adopted an erroneous interpretation of the law, which prevented the beneficial results that might have followed action clearly within its authority. In many of these cases, however, the courts have indicated that the Commission's

orders were not justified by the facts. The only case under the fourth section which can be regarded as an exception to this rule is the "San Bernardino" case—decided by the Commission while it adhered to the rule laid down by Judge Cooley, with the unanimous approval of his colleagues as members of the original Commission—that the carriers must judge for themselves in each instance whether there are dissimilar circumstances and conditions which permit exceptions to the general rule that there shall be no higher charge for intermediate hauls than for longer hauls over the same line in the same direction, when the latter include the former.

From its organization in 1887 until November, 1892, the Commission adhered to the rule just referred to, which was formulated in the first important case that arose under the fourth section. In deciding the Georgia Commission cases the Commission abandoned this rule, so far as it related to the competition of carriers subject to the Act to regulate commerce, and declared that where the dissimilarity of circumstances relied on to justify exceptions to the general rule were the consequence of such competition, dissimilarity could not be set up as a defense to a complaint of violation of the law, but must be made the basis of an application to the Commission for permission to make the greater charge for the intermediate haul. After adopting this interpretation of the law, the Commission for a number of years declined to consider evidence tending to prove the existence of dissimilar conditions arising through the competition of interstate-railway carriers or of different markets, thus preventing the introduction of testimony which the courts have declared to be of controlling importance. It is true that this erroneous interpretation of the law has prevented the enforcement of the orders in some of these cases, but it is equally true that the Commission never expected obedience to them, and that they are to be regarded as strategic moves in a combat which the Commission proposed to conduct along lines that it hoped would force the carriers to appeal to it for relief.

There seems to be ample justification, not only in the case to which it was applied, but in most of these cases, for the observation of the Supreme Court, in deciding the Chattanooga case, that in making its order "the Commission thought that literal enforcement would bring about an injustice." In fact, before making some of them, the Commission allowed an interval to elapse for the avowed purpose of permitting applications for relief, and it provided for the suspension of several of the orders after they were made in case such application should be made. In many of these cases the courts distinctly expressed the view that there was no injustice in the rate relations which were made the subject of complaint, and that there can be no controversy over the suggestion that their enforcement would have brought injustice. There is probably no one of these cases in which the enforcement of the Commission's orders would directly have modified the rates actually paid. The carriers affected might have been compelled to withdraw their competition for the long-haul traffic, but it is not at all likely that in any case they could have afforded to reduce their intermediate rates to the level fixed by competition at the terminals. In a few more recent cases the Commission has recognized the illegality of its former efforts and has given what it has

regarded as sufficient consideration to competition of the character formerly declared to be without effect as a defense. In these cases, however, the Commission appears to have fallen into the error of imagining that it was the purpose of the law to deprive certain communities of natural advantages of location which enable them to enjoy the services of great and competing routes of transportation, by land or by water, or by both.

The Griffin case is typical. The court said that the enforcement of the Commission's order would, as its first effect, "immediately disorganize and disarrange the entire commerce of which Macon is the receiving and distributing point," and that, without material benefit to the producers and consumers at Griffin, "the commerce of Macon would be destroyed in exact proportion with its inability to meet the prices of its competitors."

ATTEMPTS AT RATE-MAKING.

The last class of cases which need be mentioned is that in which the Commission has attempted to control rates, either absolutely or relatively. The cases of this sort which have gone to the courts have sometimes been decided against the Commission because of its attempts to exercise legislative functions that have never been delegated to it, but a study of the decisions themselves affords ample warrant for the statement that the disapproval of the Commission's action has usually extended to its conclusions upon the facts. Thus in the "Coxe" case the court reported that the basis of the Commission's determination as to what constituted a reasonable rate under the circumstances was an "unwarrantable" and "unreliable" estimate which the Commission has based upon "an erroneous principle." In the "Social Circle" case the Court declared that the Commission had omitted to consider a fact of controlling importance, and in the "Cattle Raisers" case the Supreme Court distinctly said in its opinion, "the order of the Commission was not sustained by the facts upon which it was predicated."

Yet Commissioner Prouty told this committee last week that the Commission had never "been overruled by the Supreme Court of the United States on a question of fact." No doubt when the statement was made the Commissioner had forgotten that in deciding against the Commission in the Cattle Raisers' case (186 U. S., 320) the Supreme Court said:

> Being then constrained to the conclusion that the order of the Commission was not sustained by the facts upon which it was predicated, we can not enter into an independent investigation of the facts, even if it be conceded the record is in a condition to enable us to do so, in order that new and substantive findings of fact may be evolved, upon which the order of the Commission may be sustained.

Something like a disagreement with the Commission's view of the facts seems also to have been expressed by the Supreme Court when in the Import Rate case (162 U. S., 197) it said:

> The effort of the Commission, by a rigid general order, to deprive the inland consumers of the advantage of through rates, and to thus give an advantage to the traders and manufacturers of the large seaboard cities, seems to create the very mischief which it was one of the objects of the Act to remedy.

POWER OF THE COMMISSION.

In spite of the fact that but 45 of the more than 4,000 complaints brought to the attention of the Commission have gone to the courts, while at least 3,900 have been settled in the manner determined upon by the Commission or by agreement among the parties in interest, there are those who urge a more drastic law on the ground that the present statute is ineffective. The Commission itself, as shown by Mr. Walker D. Hines in his testimony before this committee, has widely and loudly proclaimed its own impotence.

I am not willing to let this occasion pass without registering the opinion that the powers of the Commission, under the law as it exists to-day, are adequate to correct, promptly and completely, any genuine case of injustice which is brought to its attention. Only last month Mr. Justice McKenna, in deciding a case in which the Commission was interested, expressed the opinion of the Supreme Court that the present provisions of law are "adequate to enable the Commission to enforce any order it is authorized to make." And the law expressly authorizes the Commission to order any interstate railway to cease and desist from any violation of the law, including, of course, the exaction of any extortionate rate or subjecting any person, place, or class of traffic to any undue or unreasonable prejudice or disadvantage through the practice of unjust discrimination in any form.

It is true that the findings of the Commission are only prima facie evidence in the courts and that the latter are empowered to supplement the investigations of the former. But the courts do not hear testimony that is not material and relevant, and if in the cases which have gone to the courts the record has not fully covered the material and relevant facts it is because the Commission has failed to exercise completely its broad powers of investigation. These powers are of great extent. The Commission is not strictly bound by the ordinary rules of evidence, and the courts have held that, in deciding whether their aid shall be available, as provided in the law, for compelling the production of testimony, either oral or documentary, before the Commission, they must be very liberal in determining what inquiries are material and relevant. In other words, if in certain cases the record made before the Commission has not been complete enough to afford the basis of a satisfactory determination of the matters involved, by the courts, it has been because the Commission itself did not utilize the broad powers of investigation conferred upon it by Congress. It has always had the power to extend its investigations in any case to the most remotely relevant or material fact. If it has failed to appreciate the importance of evidential facts which have been brought out in subsequent proceedings before the courts, it is certainly creditable to the wisdom of Congress that the law has provided for supplementing its inquiries.

Whenever the Commission frankly accepts the definitions of its powers sanctioned by the courts it will prove to be a tremendous agency for the modification of rates and the relations among rates. It will then abandon its efforts to exclude this, that, and the other class of facts from consideration by interpreting the words "substantially similar," used in the Act, as though they referred to similarity in certain details only, and, in each case presented to it, will

investigate and consider all of the facts bearing upon the rates complained against. If it then proceeds to make accurate findings of fact and to issue lawful orders based upon them most of its orders will be voluntarily, promptly, and completely obeyed by the carriers, and those which are not voluntarily obeyed will be enforced by judicial decree. Nothing is plainer than the tendency of the courts to throw back upon the Commission the burden of ascertaining and interpreting the facts in regard to complaints; and the conclusion that its findings are those of an especially expert body, entitled to great weight and not too rigidly to be reviewed or criticised or lightly to be thrust aside, is plainly to be read in many of the very decisions in which the Commission's orders have been rejected. In the Social Circle case, while refusing to enforce a part of a plainly divisible order of the Commission, the Supreme Court spoke as follows:

> It is for the tribunal appointed to enforce the provisions of the statute, whether the Commission or the court, to consider whether the existing circumstances and conditions were or were not substantially similar.

Commenting on the foregoing, in its Tenth Annual (1896) Report the Commission said that—

> The inference is plainly drawn from this language that on full consideration by the Commission of the facts in a case its determination of questions of fact, as expressed in its findings, should not be reviewed or disturbed except upon additional evidence in the circuit court which materially impairs the accuracy and weight of such findings.

Subsequent expressions of the courts seem to give substantial support to the foregoing conclusion of the Commission. But that body has not always acted upon the suggestion contained in the same opinion, that—

> The purposes of the act call for a full inquiry by the Commission into all the circumstances and conditions pertinent to the questions involved.

On the contrary, it has repeatedly and persistently followed its own fantastic interpretations of the statute and thus allowed self-imposed limitations to restrict the scope of its investigations and impair its authority. Although the Supreme Court said, in the Social Circle case, that—

> The reasonableness of the rate in a given case depends on the facts, and the function of the Commission is to consider these facts and give them their proper weight.

And in the Import Rates case declared, with reference to the conclusions "reached by the Commission, or by the courts below, in respect to what were proper rates" that "That was a question of fact, and if the inquiry had been conducted on a proper basis we should not have felt inclined to review conclusions so reached," the Commission has so conducted its work that in one of the latest cases decided, the Kearney case, the circuit court was fully justified in stating that the Commission had failed to make any finding of fact which would sustain its order. The true theory of the law and of the duties of the Commission was expressed by the circuit court for the Middle District of Tennessee in refusing on April 17, 1896, to enforce the order of the Commission in the Nashville Coal case.

In its decision the court declared that the Commission is to be regarded as a body of experts in transportation problems and that—

> This gives to the Commission's finding and opinion great weight, and entitles it to great consideration, both by the parties affected and by the courts, when called upon to enforce obedience to its mandates.

But after voicing this opinion the court was compelled to say that in the case before it the Commission's report and findings did not lay before the court the definite and distinct information necessary, that it made but "a passing allusion" to "the main issue" of fact, and that, in consequence, the Commission's investigation and opinion could not have the value which conformity to the purpose of Congress would have insured. This opinion contains the following:

> For the Commission's investigation and opinion to have this intended value, however, it should, in fact, conform to the purpose of Congress in requiring such proceedings. It is not sufficient, therefore, in a report of its findings of fact and conclusions, to do so in such general way as not to disclose its views upon particular phases of the evidence, or its conclusions of law upon facts found with reference to the particular issues in the case. Stated in another form, it is not sufficient for the report to be made up of mere conclusions. Its opinion or report should show what the issues in the case are and what facts it finds in regard to such issues. The report should make suitable reference to the evidence adduced in regard to any particular question, where there is a conflict in the proof, showing how the Commission settles the disputed fact; or, if the evidence in regard to any issue is undisputed, state that fact. In other words, the report should give the parties to be affected, as well as the court, in any judicial proceeding afterwards instituted, definite and distinct information as to what was found as facts and the Commission's opinion thereon, such as would be necessary to make a judicial opinion sufficient and satisfactory for the purpose of ordinary litigation. Now, the report of the Commission in this case does nothing of this kind. It was not intended to cast upon the courts the labor of an original and independent examination as in a case instituted here in the first instance. If so, action by the Commission would be idle. The report should on all issues make a distinct showing, so that on its face it would be prima facie good, as required under the act. The main issue made in the answer to the original complaint, as well as now in the answer to the suit in this court, is and was that the difference in the rates from the Earlington mines to Nashville and those from the same point to Memphis was rendered necessary and was justified by competitive freight rates at that point, and particularly in regard to the rates on coal, by competition in coal coming from the Pittsburg mines by means of river transportation to Memphis. The report of the Commission, notwithstanding this was the main issue, makes but a passing allusion to the fact of competition at Memphis. The report shows nothing as to the cost of coal at the Pittsburg mines, the rate per ton at which it was transported to Memphis, or the price at which such coal was sold; and the Commission does not consider nor decide to what extent, if at all, this competition affects the rates which the Louisville and Nashville Railroad Company can make on coal shipped from the Earlington mines to Memphis, so that the rate, together with the price will enable that coal to be handled on the Memphis market. If the facts in relation to this question of competition were at all important in this case, it is certain that the Commission did not so consider it, as that entire subject was summarily dismissed without any finding of facts or the expression of any opinion in regard thereto. Indeed, much of the argument at the bar on both sides has been directed to the question of what the Commission did or did not find or decide in this case. It is contended, for example, by the learned counsel for the Commission that it did investigate and did decide that the rate from Earlington to Nashville was in and of itself unreasonable and unjustly high, without regard to the Memphis rate at all; while counsel for the defendant earnestly insists (and successfully, I think) that the Commission decided no such question. It is to be regretted of course that a report so important as this, both in its effect on the parties and as a basis of suit in this court, should become the subject of construction in order to ascertain what was really decided.

In the Behlmer case (175 U. S., 648) the Supreme Court spoke of the Commission as follows:

> That body, from the nature of its organization and the duties imposed upon it by the statute, is peculiarly competent to pass upon questions of fact of the character here arising.

The foregoing was quoted by the Supreme Court in deciding the Chattanooga case (181 U. S., 1), and the court asserted that it had—

> steadily refused * * * to exert its original judgment upon the facts where, under the statute, it was entitled, before approaching the facts, to the aid which must necessarily be afforded by the previous enlightened judgment of the Commission upon such subjects.

In the Georgia Commission cases (181 U. S., 29) the Supreme Court found that the Commission had "postponed the performance of its duty" and had made no investigation of the facts, and continued as follows:

> It is now urged that we should enter into an original investigation of the facts for the purpose of considering a number of questions as to discrimination, as to preference, as to reasonableness of rates, as to the relation which the rates at some places bore to those at others, in order to discharge the duty which the statute has expressly, in the first instance, declared should be performed by the Commission.

After thus stating the course which it had been urged to take, the Supreme Court expressed its conclusion as follows:

> In the East Tennessee, Virginia and Georgia case, just decided, following the ruling made in Louisville and Nashville Railroad *v.* Behlmer (175 U. S., 648, 667), and previous cases, we have held that where the Commission by reason of its erroneous construction of the statute had in a case to it presented declined to adequately find the facts, it was the duty of the courts, on application being made to them to enforce the erroneous order of the Commission, not to proceed to an original investigation of the facts which should have been passed upon by the Commission, but to correct the error of law committed by that body, and after doing so to remand the case to the Commission, so as to afford it the opportunity of examining the evidence and finding the facts as required by law.

Numerous other expressions of the courts, similar in tenor to the foregoing, clearly indicate that whenever the Commission chooses to confine itself to the facts in each case, carefully weighing all of them and excluding none that is of controlling influence upon the rates investigated, its findings of fact are likely to receive the sanction of the courts. No one can then refuse obedience to its lawful orders and there can be no genuine abuse in the field of interstate railway transportation which they can not relieve.

POWER UNDER THE ELKINS LAW.

In the foregoing discussion of the Commission's authority I have not taken into consideration the method of correcting unjust discrimination in tariff rates provided in the Elkins law of February 19, 1903. By this act it was provided, "That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier * * * is committing any discriminations forbidden by law," application may be made to the proper circuit court sitting in equity which shall "direct and require a discontinuance of such discrimination by proper orders, writs, and process."

An opportunity to declare the evident and almost unmistakable meaning of the foregoing occurred with unusual promptness, and on

March 9, 1903, deciding the case of the Missouri Pacific Railway *v.* United States (189 U. S., 274), the Supreme Court said:

> The violation of the act to regulate commerce, complained of in the amended bill was an asserted discrimination between localities. * * * Bearing in mind that, prior to the request of the Commission upon which the suit was brought, no hearing was had before the Commission concerning the matters of fact complained of, and therefore no finding of fact whatever was made by the Commission, and it had issued no order to the carrier to desist from any violation of the law found to exist, after opportunity afforded to it to defend, the question is whether, under such circumstances, the law officers of the United States at the request of the Commission were authorized to institute this suit. * * * Power to prosecute a suit like the one now under consideration is expressly conferred by an act of Congress, adopted since this cause was argued at bar—that is, the act "to further regulate commerce with foreign nations and among States," approved February 19, 1903.

Yet the Commission has persistently ignored the machinery for the correction of unjust relations among rates thus placed at its disposal by Congress, and in its annual report for 1903, dated eight months after the decision just quoted was rendered, it declared that although the remedy by injunction was "in terms made applicable to any discrimination forbidden by law, it is at least doubtful whether it applies to discriminations which are the result of adhering to published rates."

But two conclusions are possible to those who realize the extent of the powers now possessed by the Interstate Commerce Commission. Either it grossly overstates the extent of unjust discrimination in tariff rates, or the prevalence of the evils which it proclaims should have led to the wise exercise of the power it has permitted to lie dormant. In other words, either the Commission and the other advocates of governmental rate-making misapprehend the present situation or the Commission has not done what it ought to have done. If this is so, it is not the law which has failed but its administration. And if the difficulty has been administrative rather than legislative, the reasonable course would seem to be to reconstruct the administrative agency rather than to reconstruct the law.

MANUFACTURERS IN OPPOSITION.

I should like, with the permission of the committee, to read an extract from the address of Mr. D. M. Parry, president of the National Association of Manufacturers, delivered at Atlanta, Ga., May 16, 1905. Discussing interstate-commerce legislation, Mr. Parry said:

> A remarkable public agitation on another economic question besides that of labor has deeply stirred the entire country during the last year, and that question is whether the Government, through its Interstate Commerce Commission, shall regulate railroad rates and practices. The intensity of the general discussion of this question was in good part due to an earnest recommendation for railroad regulation by the President in his last annual message to Congress. The recent session of Congress naturally became the center of the agitation, and after protracted hearings by the House Committee on Interstate Commerce a measure known as the Esch-Townsend bill was reported to the House and passed by that body with little debate and by a very large majority. This action of the House is generally credited with being an effort to satisfy what was regarded as the political exigencies of the situation. The Senate Committee on Interstate Commerce, however, continued its hearings on the proposed legislation until the adjournment of Congress, and provided for further hearings during the interim before the convening of the next session. The movement for increasing the powers of the Interstate Commerce Commission has been chiefly furthered by the Commission itself and by the executive committee of the interstate commerce law convention of 1900, of which committee Mr. E. P. Bacon, one of the speakers at our last convention, is chairman. The interstate commerce law convention

held a meeting at St. Louis last summer, at which speeches were made advocating the fixing of railroad rates by the Government and developing the policy later pursued by the officers of the convention at Washington. Many organizations of shippers and business men throughout the country indorsed the movement led by Mr. Bacon. Several notable organizations, however, like the New York Board of Trade and Transportation and the National Board of Trade, after due consideration of the principles involved in the proposed legislation, disapproved of its character in some leading phases, and other organizations not ready to either approve or disapprove assumed a noncommittal attitude. The National Association of Manufacturers took no active participation either for or against the legislation under discussion. An explanation is due the membership on this matter.

At the Pittsburg convention last year a resolution was adopted indorsing the Quarles-Cooper bill, which at that time reflected the views of those demanding railroad regulation. It seemed to be the understanding of many that this bill was in line with laws already existing to prevent discriminating rates, and its full significance as a measure authorizing the fixing of rates by the Government was not developed in the consideration of the resolution. In fact, the resolution was passed without debate, the convention being pressed for time in which to take up other matters. The proposition to have a Government commission fix freight rates has never been a subject of earnest consideration by the association, and the same is true of many other organizations of business men. While there had been some public agitation of the matter, it was not until the recent session of Congress that thousands of manufacturers and shippers gave it earnest thought and study. However, a certain portion of the press and some of those in public life apparently believed that the shipper would of course favor any proposition which promised cheaper rates, and there followed a clamorous campaign, ostensibly in behalf of the shipper, to force through Congress a bill which was essentially socialistic. Whatever the merits of the proposed legislation may be, it must at least be acknowledged that it deals with a subject of great magnitude, one which can not be too thoroughly considered before definite views concerning it are reached. Particularly should this association not be dragooned or stampeded in behalf of any proposition. Representing as it does the manufacturing interests of the country, it should at all times feel the responsibility resting upon it to be prudent and conservative. On subjects on which great difference of opinion exists it is the high purpose of the organization to foster full consideration in the effort to develop the truth concerning them. When once the association is reasonably assured that any proposed legislation is in line with justice and the advancement of the industrial welfare, it is then time to use the strength of the organization in its behalf.

With these considerations in view, it appeared at the time when the agitation on the subject became intense that no harm could result from seeking a more positive expression than had heretofore been obtained from the membership of the association as to the principles involved in the proposed legislation. A number of other bills varying in essential respects from the Quarles-Cooper bill were being pressed for consideration, and it seemed necessary to ascertain the general policy of the membership respecting their fundamental features. By correspondence with the executive committee and with the members of the committee on interstate commerce of the association it was found that while some favored the proposed legislation the majority opposed it. Your committee on interstate commerce, of which Mr. E. B. Pike is chairman, was anxious to do whatever the association desired, and besides holding several meetings the committee carried on a considerable correspondence. I took occasion myself to send a letter to Mr. Pike, outlining my personal views, with the idea of having the letter sent to the membership, but after some further consideration of the matter by both the committee on interstate commerce and also the executive committee it was decided to leave the whole question for the consideration of this convention. As the letter sent by me to Mr. Pike fairly presents my personal views and also states my attitude on the subject as president of the association, I have thought it well to append it as a part of this report.

ESCH-TOWNSEND BILL.

The Esch-Townsend bill, which passed the last House, has become the basis for present discussion. This measure provides for the exercise by the Interstate Commerce Commission of the rate-making power and also for a special court of transportation, which shall hear appeals from the decisions of the

Commission and suits brought by the Commission to enforce its orders. It is claimed that the Commission is only given the power to revise and regulate rates that are unreasonable, but to revise and regulate rates is really to exercise the rate-making power. As the rates are already established the railroads themselves do nothing more than to revise and regulate them under present conditions. The question of rebates does not properly enter into the discussion of the bill, as the leaders of the movement in its behalf themselves declare that the present laws are fully adequate to meet that evil. Whether these laws are being enforced is another question. The issue raised by the proposed bill is whether the Government through a commission shall determine the reasonableness of railroad rates and fix new rates when in the judgment of the Commission the rates are unreasonable, the rulings of the Commission to be subject to judicial review. Take for example the grain rate. Shall the Commission determine whether the differential between grain sent from Chicago to New York and from Chicago to Baltimore is unreasonable? Shall it determine whether the rate from Chicago to New Orleans is too low compared to the rate from Chicago to New York? In other words, shall it establish inelastic legal rates to take the place of the rates now fixed by competition?

In a recent interview Representative Stevens, of Minnesota, one of the leading members of the House Committee on Interstate Commerce, is quoted as believing that the public demand for the regulation of the great carrying companies is justified, and as being anxious himself to bring about proper legislation. He then gives some of the difficulties which confront Congress in responding to the demand for the regulation of rates. He refers to the three methods of fixing rates now before the country, the first being that of competition, the second that of a legal rate to be fixed by a commission or established by judgment of the courts, and third, the rate fixed by authority of State legislatures and operative only within State limits. Mr. Stevens's statements are highly illuminative of the whole question, and I wish to quote some extracts from his interview. As for the first method of rate fixing, that of competition, he believes that everyone understands it, since "it has been in operation since the beginning of railroad enterprises." As to the second method, he says:

"REPRESENTATIVE STEVENS ON THE BILL.

"Under the operation of the Esch-Townsend bill, rates would be established very gradually over the country, one section being taken at a time, and months, not to say years, would elapse before the Interstate Commerce Commission could fix rates covering the country as a whole. The rates thus established would be rigid and inelastic, for it would require a legislative enactment to make them operative and another legislative enactment to amend them, which would take much time.

"The third method, that of rates fixed by State commission, would also be rigid and inelastic, for the reason just given.

"As an illustration, let it be supposed that the Esch-Townsend bill is the law of the land, and that the legislatures of the Middle West States, such as Minnesota, Wisconsin, Iowa, Kansas, and Nebraska, enact legislation that is now pending to increase the rate-making power of railroad commissions within those States. Let it be supposed, further, that the Interstate Commerce Commission, in response to the calls for help, which are now coming from all over, was to hold protracted hearings and fix a system of rates for all tariffs to the Gulf ports. Much time would elapse before other sections of the country could have rates similarly established, and during this interval much harm might be accomplished.

"For example, the most troublesome rate in the Middle West and the territory between Chicago and the Atlantic coast, both by rail and water, is the rate on grain. There is always difficulty in adjusting this rate so as to satisfy shippers from the Missouri River to the Gulf, and shippers from the same point to the Atlantic coast by way of Chicago, or by way of Minneapolis and Duluth. Now, the primary factor in determining this rate is the cost of loading and shipping grain on barges from the Upper Mississippi to New Orleans and placing it, upon its arrival in the latter city, either upon elevators or ocean vessels. This comes about because the great highway of the Mississippi is always open, and men who can buy grain can always hire or own barges. The railroads to the Gulf must meet this barge competition, and they do it by con-

sidering the haul in both directions. The return haul is now very large, owing to the active movement of lumber, cotton, and other southern products.

"A third factor in this situation is the demand of the Minneapolis flour mills that grain be diverted toward the Northwest. There are times when the local demands for Minneapolis and Duluth are alone sufficient to take grain in that direction when the rates in the other direction are not sufficiently low.

"The situation above outlined is based on the natural pressure of business or on competition.

"Suppose, on complaint, the rates from the Missouri river to New Orleans are fixed by the Interstate Commerce Commission under, say, the Esch-Townsend bill, and that the railroad commissions of Kansas and Nebraska have fixed rates, the latter from all State points to Omaha, and the former from all State points to Arkansas City, Kans. Those rates, fixed by process of law, could only be changed by subsequent investigation and order made in process of law, and the territory where they are operative is removed from the domain of competition. Meanwhile, suppose that the Interstate Commerce Commission has not had time, as it would not have had, to fix rates from the Missouri river to the Atlantic coast, either by way of Chicago or Minneapolis and Duluth. What is the inevitable result? The rates to the Atlantic coast being controlled by competition, the transportation lines in that direction monopolize the grain trade, and the lines to the Gulf, having the inelastic rate fixed by law, and not competition, are unable to attract the grain business, and both they and the country which they traverse suffer.

"Of course, after a while the Interstate Commerce Commission will get around to the fixing of rates from the Missouri to the Atlantic, but what is to become of the Gulf traffic from that section in the meantime?

"Obviously, the rates under the Esch-Townsend, or under any other bill, could not be extended over the entire country for years, and the result meanwhile would certainly be to enrich railways and shippers in one direction and to impoverish those in another section.

"This is one of the questions which has come up in the minds of members of Congress who want to give the people what they demand, so far as that may be done fairly to all interests. The period of transition from the present competition system to the system of fixed Federal rates would be a period of distress for some parts of the country and increased prosperity for others, no matter what form the legislation might take. The concrete illustration of the Missouri river and the Gulf and Atlantic ports is typical of every other section of the country. I have merely selected it because the heavy grain shipments from the Missouri river make the illustration familiar South, East, and West. Chicago, Minneapolis, and New York have been complaining of late years of the rapid development of Gulf ports as points of shipment of grain for export. If the Esch-Townsend bill were to become effective to-morrow, and under its provisions the Interstate Commerce Commission, responding to the most clamorous demand, were to fix rates to the Gulf, the cities just named would have no further cause for complaint perhaps for years."

The man who makes these simple statements of fact is a member of Congress who has listened to all the arguments, pro and con, on the proposed legislation, and who evidently has studied the subject with the end in view of satisfying the demands of his constituents while at the same time having a regard for the best interests of the nation. There has been a great deal written about this subject of railroad regulation, but these few statements are sufficient in themselves, it appears to me, to utterly condemn the Esch-Townsend bill and every other measure which propose to substitute the inflexible legal rate for the rate determined by competition. The Esch-Townsend bill means that if one section of the country can dominate the Commission the other sections can be ruined industrially. Mr. Stevens tells the cities in his own State that if the bill becomes a law and the Commission "responds to the most clamorous demand" neither those cities, nor Chicago, nor New York would have cause to complain against rates to the Gulf for perhaps years. There can be little doubt that the Commission or any other political body that might be created would "respond to the most clamorous demand."

LOWEST RATES AND BEST SERVICE.

Is there anything in the present railroad situation which gives a valid excuse for Government regulation of rates? In other words, what sound argument can be advanced for the overthrow of the competitive system pertaining to the prices of transportation and the substitution of the socialistic system in its place?

Since 1832 the railroads of this country have developed from 229 miles to 205,000 miles, over one-half the mileage of the world. This marvelous expansion of the means of efficient and rapid transportation has been the direct result of our present system of individualism, of noninterference by government with private enterprise, of freedom by the individual to do as he pleases with his own, and of security of private ownership of property. Has the country suffered by this expansion of her railroads? It has not. On the other hand, without the railroads the country could never have reached anything like its present development. What would be the effect of a socialistic fixing of rates on the building of new railroads? This is a question of particular importance to the people of the Middle West, of the South, and the Southwest, where the possibilities of railroad construction have by no means been exhausted. The strongest incentive for the building of new roads is the making of good profits by roads already in operation. With increasing production, competition to sell reduces prices; with increased railroad mileage, competition for business must bring down the rates of transportation. Suppose when the first railroad line was built the Government had declared its rates "unreasonable" and had fixed a legal rate, does anyone believe there would have been such a great era of railroad construction as followed?

One would think from the outcry going up for the fixing of rates that railroads were absorbing the earnings of the nation through extortionate charges. Long figures concerning the so-called railroad "tax" are presented by advocates of the pending bills. It would be just as reasonable to ascertain how much the farmers obtained last year for their products and call it an agricultural "tax" on the nation. The attempt is made to make it appear that the railroad rates are so high that the shippers and the general public can no longer stand the extortion, but must have relief from Congress. Now, the simple incontrovertible fact is that railroad rates in this country are far cheaper than anywhere else in the world. These rates in general are one-third lower than those of Great Britain and France, and one-half lower than those of Germany, where the railroads are owned and operated by the Government. An examination of rates in the past also shows there has been an almost continuous tendency downward. In 1870 the rates were three times what they are now.

Although wages or the average returns on labor are much higher, yet the people of this country have the advantage of better transportation service at cheaper rates than is enjoyed in any other country. As this very satisfactory condition has been brought about under our individualistic system, and as under the continued working of free competitive conditions rates may be expected gradually to decline, it remains for the advocates of the inelastic socialistic rates to show why any change from competitive conditions is desirable and whether socialistic rate-making would insure lower rates in the future.

IMPARTIAL TREATMENT OF GENERAL PUBLIC.

I believe it is a gratuitous assertion on the part of the leaders of the anti-railroad agitation when they say that the shippers generally are clamoring against what is termed extortionate rates. The complaints coming from shippers against the railroads are almost wholly complaints of discrimination in favor of other shippers. I feel safe in asserting that what the shippers in this country want is impartial treatment from the railroads rather than arbitrary reduction of rates.

The question of interstate commerce is one which should be solved in accordance with fundamental principles the same as the labor question. Under our system of individual initiative the individual must not be hampered or checked in doing as he pleases with his own. He must, as our President puts it, "have a square deal—nothing more or less." He would not be having a square deal if a railroad or other corporation is permitted to ruin his business by favoring his competitors. Such unjust favoritism would destroy those free competitive conditions which are essential to the individualistic system. Hence, the necessity for resort to the police powers of the Government. The principle of impartial treatment of the general public must be enforced. At present, heavy fine, to which may be added imprisonment, is the penalty prescribed by the Elkins law for the granting of rebates. It is said that since the passage of this law several years ago the granting of rebates has largely ceased, but some complaints are still being made.

If the law is not enforced then it is not the fault of the law if rebates continue to be given. If the law is not sufficiently adequate then it should be amended. Perhaps it could be made better by declaring that when it is found

that a secret lower rate or rebate has been granted to any shipper, such rate shall become the open rate for, say, one year, as though the rate were part of the published classification.

It is urged that unjust discriminations between localities and different kinds of traffic are such as to require the granting of additional powers to the Interstate Commerce Commission. I believe that a study of the facts will show that discriminations of this character are not numerous, and that many of the complaints are traceable to legitimate and beneficial competition between rival localities. But however this may be, the Commission under the present law has ample power to investigate and bring judicial proceedings to remedy any unjust or unreasonable discriminations of the kinds mentioned. Unjust discriminations between localities and kinds of traffic ought to be susceptible to correction through the application of the police powers of the Government, the same as unjust discriminatoins between individuals. There is no valid reason for asserting that one kind of discrimination can be corrected by punitive legislation and that another kind can only be reached by the socialistic method of fixing rates.

I have seen it stated that the Interstate Commerce Commission has authority under the Elkins Act to proceed against the discriminations growing out of the private car lines and terminal switches. If this is so then it is its duty to take steps in this direction, but if the law is not sufficiently explicit to cover these abuses, then legislation that will reach them should be enacted. Any proper legislation that shall be based on the fundamental principle that the general public shall not be discriminated against—that is, legislation to protect free competitive conditions—appears to my mind to be necessary and legitimate. But to attempt to correct evils by legislation to destroy competitive conditions, and to take from individuals the control of their own property appears to me to be folly which can not fail to result disastrously to the industrial interests of the entire country.

THE RESOLUTIONS ADOPTED.

Mr. NEWCOMB. The convention over which Mr. Parry presided, that of the National Association of Manufacturers, adopted the resolutions which follow:

Resolved, That we favor the active enforcement by the executive department of the General Government of all existing laws to prevent the giving or acceptance of rebates or special favors (through whatever device) to or by favored shippers, and we call upon the Interstate Commerce Commission to apply all the remedies at their disposal as provided by the original interstate-commerce act and the Elkins Act amending the same.

Resolved, That, if the existing laws for the detection and punishment of the giving or acceptance of such rebates are insufficient or defective in any respect, we favor the enactment of such further legislation as may be necessary adequately to deal with the evil and to secure this complete prevention.

Resolved, That, in order to carry into effect the provisions of the foregoing resolutions, Congress should be asked for a provision to be made for the necessary examination of the books of the railroad corporations somewhat after the manner of the national-bank examinations, for the purpose of detecting and eliminating special favors and discriminations against the small or less-favored shippers; and a provision for adequate punishment for improper disclosure of confidential information so gained.

Just a word as to the time which must necessarily be expended by a commission in considering the cases presented to it. Commissioners Prouty and Clements have already explained to you the many reasons for the prolonged delays involved in the procedure before the Interstate Commerce Commission. I am not disposed to deny the force of the suggestions they have made, although it would seem that under the law as it now stands the Commission might have adopted a less tedious process, and that in many cases it might well apply directly to the courts without any of the formal preliminaries that now require so much time. I wish, however, to submit without further comment a table showing for the last thirty-two cases which have been decided the dates on which the decisions were rendered, the dates

on which the complaints were filed, and the length of time during which each case was pending.

Number of case.	Date decided.	Date on which complaint was filed.	How long pending.		
			Years.	Months.	Days.
576	Feb. 11, 1905	Mar. 3, 1900	4	11	8
607	Apr. 1, 1904	Oct. 28, 1901	2	5	3
609	Jan. 27, 1904	Dec. 11, 1901	2	1	16
615	Mar. 17, 1904	Feb. 26, 1902	2	0	21
618	Jan. 7, 1905	Apr. 5, 1902	2	9	2
620	June 25, 1904	Apr. 17, 1902	2	2	8
625	Oct. 4, 1904	May 1, 1902	2	5	3
633	Jan. 30, 1904	June 12, 1902	1	7	18
634	Jan. 27, 1904	June 23, 1902	1	7	4
644	Mar. 12, 1904	Nov. 3, 1902	1	4	9
655	Feb. 2, 1905	Feb. 5, 1903	1	11	27
658	Mar. 10, 1905	Feb. 25, 1903	2	0	15
660	Jan. 7, 1905	Feb. 27, 1903	1	10	10
681	Mar. 19, 1904	Apr. 14, 1903	0	11	5
683	Jan. 5, 1905	Apr. 22, 1903	1	8	13
684	Feb. 18, 1905	Apr. 27, 1903	1	9	21
691	June 4, 1904	June 6, 1903	0	11	28
696	June 23, 1904	June 17, 1903	1	0	8
698	Feb. 7, 1905	June 23, 1903	1	7	14
699	Jan. 5, 1905	June 25, 1903	1	6	10
702	Mar. 25, 1905	June 30, 1903	1	8	25
707	Feb. 7, 1905	July 24, 1903	1	6	13
709	Apr. 11, 1904	Aug. 4, 1903	0	8	7
710	June 25, 1904	Aug. 10, 1903	0	10	15
714	Apr. 11, 1905	Oct. 3, 1903	1	6	8
724	June 25, 1904	Nov. 28, 1903	0	6	27
725	June 24, 1904	Dec. 4, 1903	0	6	20
726	June 25, 1904	....do.....	0	6	21
741	Jan. 13, 1905	Mar. 22, 1904	0	9	21
743	Apr. 24, 1905	Mar. 26, 1904	1	0	28
780	....do.....	Oct. 15, 1904	0	6	9
785	....do.....	Oct. 28, 1904	0	6	26

In the foregoing table the cases are referred to by the docket numbers used by the Commission. They can easily be identified by reference to its annual reports or to the reported volumes of its decisions. It appears from the table that of the 32 cases included 1 was pending during a period of four years eleven months and eight days; 7 were pending over two years but less than four, and 14 were pending more than one year but less than two years. Of the entire 32 cases there is not a single one in which decision was rendered within six months of the date on which the complaint was filed. These cases probably fairly represent all of those decided by the Commission, so far as the time occupied is concerned. It is worth nothing, therefore, that the aggregate time for the 32 cases was fifty years and thirteen days, or an average for each case of one year seven months and seven days.

Senator FORAKER. I do not think that I have any questions to ask you, Mr. Newcomb, but I would like to suggest, if it will not be too much trouble, that when you give us the information I asked for in regard to the operation of the State commission in Georgia you also give us the same information as to the commissions in other States, in so far as you can.[a]

Mr. NEWCOMB. It seems to me, Senator, that there is no more important subject of investigation than the results of legislative rate making in these States, and the fact that it has been neglected when a question of this sort is before the American people indicates a lack of appreciation somewhere of its importance. The test of experience is before us in these States. We can find out just how this thing has

[a] This statement, when received, will be printed as an appendix.

worked, and we have not found out. I can not answer your question as I would like, but I will give you everything I can on that subject.

Senator NEWLANDS. What railroad do you represent?

Mr. NEWCOMB. I can not say that I represent any railroad. I am here at the request of some railroad men who have been familiar with my work in some degree and who thought that it might be a good thing to have me here, I suppose.

Senator NEWLANDS. So that you are not interested for any particular system?

Mr. NEWCOMB. I am speaking for myself. What I have said is the result of study that has extended over a period of some fifteen or twenty years, and conclusions that have come to me and are my own solely.

Senator NEWLANDS. Do you think there ought to be any regulations of interstate rates by the National Government?

Mr. NEWCOMB. I think there ought to be very strict provisions in regard to the equal treatment of all individuals who purchase railway transportation.

Senator NEWLANDS. Would you end there?

Mr. NEWCOMB. I think that the power of the courts to control rates where they are exorbitant is a salutary and proper power.

Senator NEWLANDS. How would you have the court do that? Simply in damage suits by individual shippers?

Mr. NEWCOMB. If there is any way of bringing these cases more promptly before them and more satisfactorily before them I see no objection to it.

Senator NEWLANDS. Can you suggest any?

Mr. NEWCOMB. It seems to me the method in the present law is rather complete.

Senator NEWLANDS. That is the method by injunction?

Mr. NEWCOMB. By injunction.

Senator NEWLANDS. But without the interposition of the Interstate Commerce Commission at all, could the shipper who claimed a rate was exorbitant apply to the court and obtain an injunction against that rate in the future or until the order is modified?

Mr. NEWCOMB. I would not like to pass upon that question. You have had before you very many men who are much abler to pass upon that than I am. There are some indications that the courts might take that view of it.

Senator NEWLANDS. It is uncertain?

Mr. NEWCOMB. It is uncertain, certainly.

Senator NEWLANDS. It is a very great enlargement of the equity jurisdiction?

Mr. NEWCOMB. I am not so sure that it would be a real enlargement of the jurisdiction.

Senator NEWLANDS. What is your opinion—that the court would, if such a law were passed, take jurisdiction?

Mr. NEWCOMB. I do not know. I should be willing to try.

Senator NEWLANDS. Do you think it would strengthen the jurisdiction of the court in such a case if we gave that power to the Interstate Commerce Commission in behalf of the public to bring an action to restrain?

Mr. NEWCOMB. I believe that there is no genuine case of injustice in the relations among rates that can not be remedied under the present

law as it stands, and I think those cases can be handled promptly and effectively, and that we ought to see what the present law will do before we try another.

Senator NEWLANDS. You think that under the present law the Interstate Commerce Commission could go into court and ask a restraining order to prevent the collection in the future of the rates alleged to be unreasonably high?

Mr. NEWCOMB. They can enjoin an unjust discrimination under the present law.

Senator NEWLANDS. But could they enjoin the collection of a rate that was alleged to be unreasonably high?

Mr. NEWCOMB. I do not believe there is such a thing as a rate that is unreasonably high, except in comparison with another rate. I do not believe there is a case of an exorbitant rate per se.

Senator NEWLANDS. You do not think there could be a rate that was exorbitant per se?

Mr. NEWCOMB. Oh, there could be, but there never will be.

Senator NEWLANDS. Why?

Mr. NEWCOMB. It would have to be so high in order to be exorbitant in and of itself that it is absolutely out of the question that such a rate could ever be put in force.

Senator NEWLANDS. In order, therefore, to get the protection of the court, the rate would have to be so exorbitantly high as to make it very improbable that such a rate would ever be sought to be enforced by the railroads?

Mr. NEWCOMB. The protection of the court is ample in any case of injustice, because there is no rate that is unreasonable that is not unreasonable in relation to other rates. That comparison can always be made, and as a matter of fact in all cases that the Commission enumerates as being excessive rates per se, if they had been tried before the Commission on the allegation that they were unreasonable in comparison with some other rates, the same result could have been reached. The question always will be, What are the rates in comparison with other rates?

Senator NEWLANDS. So that that is the only way that you can get at an unreasonable rate. Is that your opinion?

Mr. NEWCOMB. I am sure of it.

Senator NEWLANDS. We will assume, then, that, for illustration, the Southern Pacific system, with 15,000 miles of railway, becomes consolidated with the Northern Pacific and the Great Northern system, with about 7,000 more, and then with the Atchison, Topeka and Santa Fe, with 7,000 more miles, and that they are all under one system. Would you regard it as impossible to increase all the rates in that region 10 per cent?

Mr. NEWCOMB. Then we would compare them with the rates that were formerly in vogue.

Senator NEWLANDS. Would it be impossible, competition between the railroads being eliminated, to increase the entire tariff 10 per cent?

Mr. NEWCOMB. They would probably do less business on 10 per cent increase and make less gross revenue than they made before.

Senator NEWLANDS. You do not believe, then, that the present competition between those railways has had any effect whatever in reducing rates?

Mr. NEWCOMB. Oh, yes; I do.

Senator NEWLANDS. Very well, then, if that competition was taken away, would not the increase of rates necessarily follow?

Mr. NEWCOMB. When rates have been reduced business adjusts itself to the new conditions. The volume of business is determined by reduced rates and the increase of those rates would cause the volume of business to decrease.

Senator NEWLANDS. I understand you to say that competition has been a factor in reducing rates?

Mr. NEWCOMB. Yes.

Senator NEWLANDS. Very well, if that influence is removed, will not the tendency toward reduction of rates be stopped?

Mr. NEWCOMB. If reduced rates had built up new business and you put the rates back, that new business stops.

Senator NEWLANDS. Do you regard it as practically impossible, through consolidation and eliminating competition, to increase the rates?

Mr. NEWCOMB. A general increase is impossible. Adjustments, as between different articles and services, can always be made. They can be made one way or another.

Senator NEWLANDS. How about the tendency toward reduction of rates? Do you think it would have any effect upon that? Would it stop that?

Mr. NEWCOMB. In practice it has not stopped it.

Senator NEWLANDS. Consolidation has not?

Mr. NEWCOMB. In practice it has not retarded it. We have never had that sort of consolidation you are talking about, but, in the case you suggested, unless you consolidated with the roads doing business in the South, say, and those in other regions which produce the same class of commodities, I should say it would not affect them at all.

Senator NEWLANDS. So that while competition has had an effect in reducing rates, you do not think that the doing away with competition will have any effect either in steadying rates or in increasing them in the future?

Mr. NEWCOMB. It would undoubtedly steady them. The reductions would be made in a different way.

Senator NEWLANDS. Then, if it steadies the rates, it does prevent reduction that has been going on in the past?

Mr. NEWCOMB. I want to make this distinction. Competition has not reduced the general average of railway rates at all. Competition has reduced some railway rates at the expense of some other rates. I think probably by causing certain classes of expenses it has kept up the general level somewhat.

Senator NEWLANDS. Your idea is that consolidation would tend toward equalization of rates as between communities?

Mr. NEWCOMB. It would have that tendency, certainly.

Senator NEWLANDS. And in that way it is beneficial. Now, you say that increase of rates is practically impossible, and yet we had such an increase four years ago, did we not?

Mr. NEWCOMB. No.

Senator NEWLANDS. Professor Ripley, I believe, testified to some increases ranging from 30 to 50 per cent.

Senator DOLLIVER. And Judge Cowan testified to some cattle increases.

Mr. NEWCOMB. I said that adjustments between particular services are always possible. There has been an actual advance in the average per ton mile when you measure it simply in the money by which it is paid; but if my salary is doubled and I can only purchase half as much with a dollar as I could before I am no better off. The railways are in that situation. The purchasing power of the money they receive for the services they perform has decreased about 20 per cent, while the money rates of charge have increased only about 5 per cent. That is not an increase in rates.

Senator NEWLANDS. The rate itself has been increased.

Mr. NEWCOMB. The rate measured in money, but, as Adam Smith told us long ago, and as John Stuart Mill repeated, and every economist has repeated, there is a nominal wage and a real wage. The nominal wage is what you get in money and the real wage is what you can buy with it. And in the same way there is a nominal railway rate paid in money and a real railway rate that is paid in labor and rails and fuel and supplies of all sorts.

Senator NEWLANDS. You think that has not increased?

Mr. NEWCOMB. It has not increased; it has decreased.

Senator NEWLANDS. The nominal rates have increased?

Mr. NEWCOMB. Yes; and the real rates have decreased.

Senator NEWLANDS. Your idea, I believe, is, Mr. Newcomb, that no Government regulation is necessary; that the railroad companies will not advance rates, and that they will continue to reduce rates steadily, even though competition between railways is eliminated by gradual consolidation.

Mr. NEWCOMB. I think, as far as that elimination and consolidation are required to go, rates will still be regulated by the forces which have regulated them in the past much more successful than legislation.

Senator NEWLANDS. You recognize the fact, though, that they can, if they choose to do so, increase rates? They have already done that?

Mr. NEWCOMB. No; they have not. No, sir; they have not advanced rates at all.

Senator NEWLANDS. Did they not advance rates in 1900, I mean nominal rates?

Mr. NEWCOMB. Yes; they advanced nominally.

Senator NEWLANDS. But they did not advance rates as compared with commodities and price of labor, etc.?

Mr. NEWCOMB. No; they were able to buy less for the money they received for these services.

Senator NEWLANDS. Then your contention now is that labor and commodities have increased in a very much higher percentage than railway rates?

Mr. NEWCOMB. Yes.

Senator NEWLANDS. How much higher?

Mr. NEWCOMB. The statistics indicate that the commodities in general have increased about 20 per cent and railway rates have increased about 5⅓ per cent.

Senator NEWLANDS. So that there is still a difference of about 15 per cent?

Mr. NEWCOMB. That, of course, reduces it to mathematical terms which make the fact appear much simpler than it really is. The

changes can not be figured out anywhere near as closely as that, but that is the best that the Government's most competent statisticians have been able to do with these problems.

Senator NEWLANDS. But your suggestion is that commodities and labor have increased about 15 per cent more than the railway rates have?

Mr. NEWCOMB. Yes.

Senator NEWLANDS. If that increase of 5 per cent is not an increase, in your judgment, what is to prevent the railways incurring the other 15 per cent? You would then say there is no increase, would you not?

Mr. NEWCOMB. Then they would have just kept abreast of the changes in purchasing power.

Senator NEWLANDS. So you think the railroads are justified in increasing their nominal rates throughout the country 15 per cent?

Mr. NEWCOMB. I am free to say they can not do it.

Senator NEWLANDS. You feel they would be justified in doing it?

Mr. NEWCOMB. If they could do it without breaking up business or interfering with the commerce of the country, and the lapse of time does not require normal reductions, as I think it does, they would be justified, but they would not be justified in interrupting the normal trend of commerce.

Senator NEWLANDS. As we have already had an increase of 5½ per cent, and they could raise the nominal rates 15 per cent from the standpoint of income; and the relative value of transportation, as compared with commodities and labor, and leaving out a few other considerations, you would regard the increase of 15 per cent in all the rates of the country as justified, would you not?

Mr. NEWCOMB. No. The rates ought to decline. They do naturally decline, and the railways would have no right to interrupt that normal tendency.

Senator NEWLANDS. Then, in that case, the 5½ per cent was justified, was it not, that has already taken place?

Mr. NEWCOMB. I think it was absolutely necessary in order that they should continue the business, that there should be some readjustment, owing to the increased value of the money.

Senator NEWLANDS. Very well; do you not think it is absolutely necessary they should have the other 15 per cent?

Mr. NEWCOMB. Apparently not. Business has gone on, the country is prosperous, the railroads are prosperous, and so I should think it had stood the test of time.

Senator NEWLANDS. So you think, in this sense, economics and justice will absolutely regulate the rates themselves and tend gradually toward a reduction of the rates without any regulating power whatever?

Mr. NEWCOMB. The experience of seventy years shows that it has done precisely that.

Senator NEWLANDS. But we have had the influence of competition, and a very active competition.

Mr. NEWCOMB. The most active competition, the most tremendous force of competition, is the competition of markets, different groups of producers, and this kind of competition can not be eliminated, no matter what happens.

Senator NEWLANDS. Well, it would be eliminated, provided all the railroads of the country were in the ownership of one corporation.

Mr. NEWCOMB. They would still compete with the steamship lines from Argentine, and every other competitive source of production; and our people would still have to compete with the peoples of the world, even if our special commodities did not compete. We have got to live as a competitive group.

Senator NEWLANDS. It is true that we would still be subjected to the competition of foreign markets, but if there were but one ownership of railways in this country we would be relieved of the competition of our domestic markets so far as the operations of the railways were concerned, would we not, as a factor in determining rates?

Mr. NEWCOMB. I can conceive of a world where there are four dimensions, and I can conceive of such a condition just as easily as I can of the one you suggest. One is just as likely to be realized as the other.

Senator NEWLANDS. You were going over the items of expenditure in income during the year 1903. Did I understand you to hold a part of this income put down here as $1,900,000,000 consists of duplications?

Mr. NEWCOMB. I think that $1,900,000,000 is the actual operating receipts. There is no duplication in that. The duplication is in the earnings from other sources. I did not speak of that, however. I spoke of the earnings or the amounts paid on the stock and bonds. I did not speak at all of the gross receipts.

Senator NEWLANDS. Take the amount that is paid upon the bonds, net interest on funded debt, $268,000,000, is there any duplication there?

Mr. NEWCOMB. May I see the table you are referring to? [Examines the table.] The duplication is eliminated in that table. That is the table I used.

Senator NEWLANDS. Now, in the matter of regulation, clearly under the decision of the Supreme Court the Interstate Commerce Commission would have to bear in view the entire operating expenses, would they not, and have to allow them?

Mr. NEWCOMB. If they wanted to establish the unreasonableness of the entire schedule of rates, or the unreasonableness per se of a single rate, I have no doubt they would. I do not believe that the Interstate Commerce Commission or anyone representing a shipper will ever be in that position. It seems to me it would be a very poor way to handle any case.

Senator NEWLANDS. Yet that is what the Supreme Court has laid down as a rule in that matter.

Mr. NEWCOMB. That was laid down, of course, in the Nebraska rate case, and that seems to me the trend of their decisions—where you have to challenge an entire schedule. That seems to be an impossible situation in any such regulation as we have experienced through the Interstate Commerce Commission, or as is proposed through that medium.

Senator NEWLANDS. That rule does control them in regulating rates?

Mr. NEWCOMB. The only question, it seems to me, that can arise is the relation between different rates.

Senator NEWLANDS. Where it is now one commodity has relatively a higher rate than another, and that is unjust?

Mr. NEWCOMB. Yes; or one locality.

Senator NEWLANDS. Or one locality. Now then, assuming the gross revenue is fair, the reduction of the rate of a particular locality or particular localities would diminish the gross revenue below what was fair, would it not?

Mr. NEWCOMB. It might increase it. It might increase the traffic so as to increase the gross revenue. That very often happens.

Senator NEWLANDS. Well, then, do you regard this rule that has been laid down by the Supreme Court, that in the matter of regulations in rates the Commission must have in view the value of the property, a fair return upon that property, the allowance of its operating expenses, taxes, etc., and fixed charges, fair returns to the stockholders, etc., as a reasonable rule?

Mr. NEWCOMB. That would be very reasonable, if the Commission is going to make an entire schedule, but it does not seem to me to have a very strong bearing upon an individual rate.

Senator NEWLANDS. Then how is the court going to determine how a particular rate, then, that has been lowered by the Commission, is confiscatory?

Mr. NEWCOMB. I have a great deal of doubt upon that point. That is a very important question. I doubt if that ever could be determined in regard to a single rate, unless the rate did not pay the amount actually incurred to handle the particular business to which it was applied. Those cases would be very rare indeed.

Senator NEWLANDS. And yet the court has declared rates were confiscatory, has it not?

Mr. NEWCOMB. In regard to a general schedule.

Senator NEWLANDS. Only regarding a general schedule?

Mr. NEWCOMB. Yes. I think it is quite an open question whether they can declare that in regard to a particular rate. The Iowa railroad cases took the opposite ground very clearly, but the case of Smyth *v.* Ames seems to indicate they might find a point where they could stop the process of confiscation before there was an actual loss of property, if it was attempted to take up rates in detail.

Senator NEWLANDS. So that where a single rate or a small group of rates are attacked, and not the entire schedule, you think there will be great difficulty, however unjust the action of the Commission might be, in having the court declare that a confiscatory rate?

Mr. NEWCOMB. I think it would be quite impossible under any standards that have been laid down.

Senator NEWLANDS. Very well, then. What protection is there in the courts?

Mr. NEWCOMB. If the power to name a reasonable rate was given to anybody, I presume the tribunal to which the power was delegated could not name an unreasonable rate. The use of delegated power can always be tested as to whether it is within the scope of the power delegated and the terms of the delegation.

Senator NEWLANDS. So that in that event the court could not determine what simply was a confiscatory rate, but what was a reasonable rate?

Mr. NEWCOMB. I suppose the power to name a reasonable rate would not be the power to name an unreasonable rate.

Senator CULLOM. What is the last answer?

Mr. NEWCOMB. I suppose the power to name a reasonable rate would not be the power to name an unreasonable rate.

Senator NEWLANDS. Which would you regard as the better system, the system which would give to the Interstate Commerce Commission the power to fix these rates upon complaint or a system which might be called automatic in its regulation?

Mr. NEWCOMB. I would prefer an automatic system.

Senator NEWLANDS. By providing for such regulation of rates only as will secure to the company its operating expenses, its taxes, its fixed charges, and allow a certain fixed rate of interest in the shape of dividends upon the stock which could be valued, leaving within those limits the control of the rates in the hands of the corporation?

Mr. NEWCOMB. Do you mean as the choice of evils?

Senator NEWLANDS. Yes.

Mr. NEWCOMB. I do not know. Both of those systems would seem sure to operate badly. The first one, as I tried to set out this morning, would stop individual freedom of action on the part of the rate-making officers. It would make them advocates of existing rates, and tend to make them resist every change. The other system fixes a maximum return on the capital, makes it unnecessary to improve your business or your methods, and you have no incentive to earn any more. You can earn your maximum rate just as well perhaps by doing a small amount of business as by doing a large amount, and you will do just what you have to to earn that maximum, and then stop.

Senator NEWLANDS. If, with the increase of population and business in this country, the income of a company would greatly increase, the excess over a reasonable dividend fixed by law would then be applied either to betterments or increase of wages, or to reduction in rates, would it not?

Mr. NEWCOMB. I do not think there would be any increase of that sort. They would simply stop making efforts to increase their business. It is easier to stay where you are than it is to devise improvements in your business.

Senator NEWLANDS. Do you think that has been the condition in England? There is a limitation there of 6 per cent.

Mr. NEWCOMB. Well, England has had a parliamentary commission on industrial depression. We have not had one yet.

Senator NEWLANDS. But we had occasion for one from 1893 to 1897, did we not?

Mr. NEWCOMB. We got out of it very nicely.

Senator NEWLANDS. And I think we had an industrial commission, too.

Mr. NEWCOMB. We had an Industrial Commission. We are in a better situation, I think, industrially, than England.

Senator NEWLANDS. Take it in Massachusetts. I am told that there all of the electric trains are incorporated under laws which permit a 6 per cent dividend, and a division between the States and municipal corporations of all profits above that. What would you think of that? Would not that be giving an incentive to the corporation to promote business?

Mr. NEWCOMB. I should rather, Senator, that some one should make a close, careful investigation of the results under that law. A priori, I should expect it to be a hindrance to the normal improvement of business methods. I have not studied it. My impression is that the

Boston and Albany Railroad, when operating under those conditions, was, perhaps, subject to that criticism. They did not do all they might have done to increase their business.

Senator NEWLANDS. Is it not a fact that there is less friction and less feeling between the railroads and the people in New England than in any other part of the country?

Mr. NEWCOMB. I think so.

Senator NEWLANDS. Is it not a fact that those railroads are better administered, as a rule, than in other parts of the country?

Mr. NEWCOMB. I think that the Pennsylvania Railroad is the best administered property in the country.

Senator NEWLANDS. I will not compare it particularly. I will not make it so extreme. Is it not regarded as one of the best administered portions of the country?

Mr. NEWLAND. I am never as comfortable traveling in New England as in other places. That is about all that I know about it. I think not. I think that the railroads in the West are better and more progressive.

Senator NEWLANDS. Now, Mr. Newcomb, you are the author of some works on railway economics, are you?

Mr. NEWCOMB. Yes.

Senator NEWLANDS. You are a practicing lawyer here?

Mr. NEWCOMB. Yes.

Senator NEWLANDS. Are we to understand you appear simply independently, or are you employed?

Mr. NEWCOMB. I appear at the request of some railroad companies. I represent my own notions on this subject.

Senator NEWLANDS. Are you employed?

Mr. NEWCOMB. I am paid for my time.

Senator FORAKER. Have you studied railroad conditions in other countries?

Mr. NEWCOMB. Not as I should like to do; I have studied them only at second hand.

Senator FORAKER. Can you tell us of the effect of governmental regulation or governmental ownership in the other countries of the world?

Mr. NEWCOMB. Only as I have studied the works of men who have made first-hand studies.

Senator FORAKER. I mean as to the decline of rates?

Mr. NEWCOMB. I think there has not been any, particularly in Prussia, where it is supposed to have worked better than anywhere else. There has not been any decline.

Senator FORAKER. And what can you tell us as to the effect of governmental regulation and as to the fixing of rates in England, as to the decline?

Mr. NEWCOMB. There seems to be just as much complaint in England as there is in this country.

Senator FORAKER. And how is it as to France?

Mr. NEWCOMB. I can not answer as to France at all.

Senator FORAKER. If you have opportunity, before you put these other matters in evidence that you intend to look up and supply, I wish you would look and give us the result of your investigations in a general way, not going into detail, as to the effect on the decline in

rates of governmental interference with fixing of rates in any of the other countries?

Mr. NEWCOMB. I think it is perfectly true that it has very greatly retarded wherever it has been applied. I shall try to get you fuller information, if there is any.

Mr. Chairman, I meant, as a part of my remarks this morning, to ask permission to submit an analysis of the decisions, made up almost wholly from quotations from the decisions of the court, of the refusals of the Federal courts to enforce the orders of the Interstate Commerce Commission, and ask that it be printed.

Senator KEAN. It can be printed in the appendix.

Senator DOLLIVER. I want to ask you to do a thing for me. I have been confused by the statements which have been made about the increase in rates in 1900. A very reputable gentleman testified here that a meeting was held in the fall of 1899, in which two hundred railroads were represented, and that they talked the situation over, and appointed a common agent to promulgate a change in the rates of all the important merchandise passing to and fro between the Mississippi river and the coast, north of the Ohio and Potomac rivers, and that this new schedule operated to take the staple articles of merchandise, such as the stock of a jobbing house, and by transferring separate articles from one classification to another, and to very greatly increase the rates upon them. Now, if you can do it, I would like you to make a calculation based upon the change in the rates of staple articles of merchandise, articles of universal consumption, as affected by that new schedule.[a]

Mr. NEWCOMB. Yes; I shall be very glad to attempt that. Those facts are very fresh in my memory and I might repeat them, as it will not take but a moment. Now, the Official classification is the classification of freights applying in the territory north of the Potomac and Ohio rivers and east of the Illinois-Indiana State line and the Great Lakes—that is, the western shores of the Great Lakes.

Senator DOLLIVER. That extends, I understand, to the Mississippi river.

Mr. NEWCOMB. Yes; on some classes of business it extends to the Mississippi river. It covers all traffic in that territory not taken at special commodity rates. In 1899, prices and wages having gone up, that is, the purchasing power of money having decreased, the railroads were in the situation where their operating expenses were very much higher than they had been, and this Official classification—not a new meeting, nor a new group of the railroads—but this Official classification committee met to consider what changes would fit that situation, and they advanced 818 articles out of 10,000 articles in that classification. That classification provided, for most articles, ratings applicable to shipments in carload quantities, and also other ratings applicable to shipments in less than carload quantities. The shipments in less than carload quantities are relatively very small. Eighty-five per cent of these 818 changes applied entirely to less than carload quantities, the balance to carload shipments, or in a few cases to articles that are carried regardless of quantity and have no carload rates. That classification was put in force on the 1st day of January, 1900. Three months later, meeting the protests of shippers and after meetings at which the shippers were represented, they took

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[a] These statements, when received, will be printed as an appendix.

off 20 per cent in some cases and 15 per cent in others from a great many of those changes, and other reductions have been made since that time.

Senator DOLLIVER. Now, then, I do not want to trouble you to go into that any further. You have made a calculation that upon an average these increases amounted to 5½ per cent, and I want to know what they actually amounted to with a list of articles of staple merchandise passing over that country.

Mr. NEWCOMB. I will do what I can in that direction. You understand that is quite an extended investigation.

STATEMENT OF MR. W. C. MAGEE.

Senator KEAN. You may state your occupation and place of residence.

Mr. MAGEE. I live at Pittsburg, Pa. I am in the coke and coal business. I am connected with the firm of Pickand & Magee Coke Company.

Senator KEAN. What is the extent of your production?

Mr. MAGEE. We are running from 65 to 100 cars a day.

Senator KEAN. Where do you ship?

Mr. MAGEE. All over the United States.

Senator KEAN. Do you desire to make any statement before the committee?

Mr. MAGEE. I have been asked to come here, and I am willing to answer any questions that anybody wishes to ask me.

Senator KEAN. Well, in shipping all over the country how do you find the rates?

Mr. MAGEE. Sometimes we find them pretty high. As a rule we find them fair and liberal.

Senator KEAN. When you are dissatisfied with the rate and find it is too high, what do you do?

Mr. MAGEE. Take it up with the railway companies, state our case, and try to show them wherein we think we are not being properly treated, and that if they insist upon that rate continuing it will mean loss of business to us and loss of business to them. What is our success is their success.

Senator KEAN. What success have you had with the railroad companies?

Mr. MAGEE. Nine times out of ten we have been properly met and afforded consideration, and the business goes on.

Senator KEAN. And when they did not give you the reduction you asked for, what reason did they give?

Mr. MAGEE. That they could not afford to do the business without changing their whole classification of rates in other directions.

Senator KEAN. Then, I should judge from your statement that you are satisfied with the existing conditions?

Mr. MAGEE. We have very little complaint to make. We always have complaints to make, as far as that goes.

Senator KEAN. Have you ever made any complaint before the Interstate Commerce Commission?

Mr. MAGEE. We have never found it necessary.

Senator KEAN. Do you think it would add to your business and

your best interests if the Interstate Commerce Commission had power to fix rates when a rate was found to be unreasonable?

Mr. MAGEE. I would rather deal with the railroad people than with the Interstate Commerce Commission for this reason: The transportation lines have met and studied through their men all the conditions for each and every locality, and it seems to me that they are very much better equipped and in a very much stronger position to do business by reason of their intimate knowledge with the surroundings and conditions than it would be possible for a commission in Washington City to be, no matter how intelligent they are or how good their intentions are to meet the conditions. I do not believe we could get it before them as quickly or as satisfactorily as we can before the railroad men.

Senator KEAN. Do you know of any rebates being paid?

Mr. MAGEE. I do not. In our business there is not a rebate being given, to the best of my knowledge.

Senator KEAN. What roads are you on?

Mr. MAGEE. The Pennsylvania, the Baltimore and Ohio, and the Vanderbilt systems. We have three lines of road, and ship from Portland, Me., to Los Angeles, Cal.

Senator KEAN. Have you anything further that you would like to say?

Mr. MAGEE. No; I have not.

STATEMENT OF MR. ALBA C. JOHNSON.

Senator KEAN. You will state your name, residence, and occupation.

Mr. JOHNSON. I live at Philadelphia. I am a partner in the firm of Burnham, Williams & Co., which operates the Baldwin Locomotive Works. We are manufacturers of locomotives, both for American and for foreign railroads, and have produced upward of 2,000 locomotives per annum. We employ some 15,000 men in our principal works in the city of Philadelphia, and are large shippers, both inbound and outbound. Our inbound shipments consist largely of materials used in the manufacture of locomotives, and amount approximately to from 300 to 400 carloads a week. These shipments go out largely in the way of finished locomotives, but there are also large shipments of material as well.

Senator KEAN. You ship over all the roads in Philadelphia?

Mr. JOHNSON. We ship over all the principal roads in the country, because our shipments go to every part of the country, as well as to Mexico and to Canada.

Senator KEAN. What is your experience with the railroads?

Mr. JOHNSON. Our experience, which has extended over a great number of years, has been that there is a disposition upon the part of the railroads to make rates which are equitable and satisfactory. Until the present classification was adopted, the railroads appeared to adopt the fact that there was a substantial partnership existing between the producers and the carriers, and that the obligation rested upon them to protect the producers in the districts which they served upon a basis as favorable as those of competitors served by other railroads. That principle has governed, so far as I have been able to per-

ceive, the relations between the railroads and ourselves during all the time in which we have been shippers.

Senator KEAN. You are large shippers? You must necessarily receive a great deal of material and also ship away a great deal of the finished product. Do you find the rates generally reasonable?

Mr. JOHNSON. The rates are generally reasonable.

Senator KEAN. Have you any complaint of the rates?

Mr. JOHNSON. We have no reason to complain of the rates. What we regard as essential is that the rates shall be the same for the same commodity to all shippers, and so long as that principle is observed by the railroads it is less important to us what the rates are. I think that is a general principle governing shippers throughout the country. There are, of course, instances in which the making of certain rates will enable our productions to compete successfully in markets which we could not otherwise enter. Our manufacture is to some extent a specialty. It is not manufactured widely. The number of those who are engaged in its manufacture is comparatively limited.

Senator KEAN. But the material used are not specialties?

Mr. JOHNSON. No; they are the ordinary metals and other articles of commerce which come from a very large territory.

Senator KEAN. And you find the rate reasonable on those?

Mr. JOHNSON. Entirely so.

Senator KEAN. Of course you do complain sometimes in regard to rates?

Mr. JOHNSON. I think that it would be putting it too strongly to say that they make complaints. There are sometimes minor corrections that we have to adjust, but as a rule we have no difficulty in securing a satisfactory and equitable adjustment of those questions.

Senator KEAN. Then you would rather go to the railroad company, to the freight agent of the railway company, to adjust your rates than you would, if there was an unjust rate and one that you complained of, to the Interstate Commerce Commission?

Mr. JOHNSON. We would by all means prefer dealing with the freight agents of the railroads than with any governmental body.

Senator KEAN. Why?

Mr. JOHNSON. I am of opinion that the operation of any governmental body fixing rates must result in a loss of the flexibility which at present exists. As I have said before, it sometimes happens that it is necessary to enter markets by reason of cooperation with the carriers. At present we are able to do that. We would feel that it might not be so flexible if a new arrangement were made.

Senator KEAN. Have you anything further that you would like to say?

Mr. JOHNSON. I think that what has been said so ably by Mr. Newcomb covered much that I would like to say. The important points which I desire to emphasize are the fact that the true relationship which exists between the shipper and the carrier is that of a partnership. I believe that that relationship will exist satisfactorily unless it is hampered or disturbed by governmental action. I believe that the operation of the natural laws of supply and demand, the natural desire on the part of the carriers to increase the efficiency of the lines under their control to the maximum extent, must result in the creation of rates by those carriers which will increase the business to the

largest tonnage which it can get. That increase can not be obtained by making perpetual rates nor by making unjust rates.

The principle of copartnership precludes anything of that sort. I look also with apprehension on the granting of the right of the rate-making power to any governmental body. I have carefully considered the reasons which are advanced for giving that power to them. I believe that the necessity for it, as business is conducted, does not exist. I believe that the suggestion comes largely because of the fears rather that the necessities of the people. Where government interference in rates and other operation of railroads has taken place in other countries it has not worked well. I have had personal opportunities of observing this in some foreign countries. I have particularly in mind the Argentine Republic and our neighbor, Mexico. Both of these countries have one difficulty, however, to contend with that happily we are free from, and that is the fluctuating value of their money. The tendency of any public rate-making body is to destroy the flexibility with which business can be done. When a rate has been passed upon by such a rate-making body in one sense it becomes a vested interest, and we have seen in foreign countries instances where rather than reduce the rate which has been made by the Government the railroads have permitted the industries to languish and to die out altogether, because the reduction of the rate on which they depend for existence affects the question of rates on other commodities, and rates affecting other industries.

It goes without saying that the giving of rebates should be punishable. I believe that the giving of rebates is now punishable. If the present powers for preventing the granting of rebates are not adequate, then by all means I am in favor of providing adequate means of preventing such a thing.

I have read with great care this House bill 18588, the Townsend bill, and there are certain thoughts in connection with that bill which I had come prepared to express. In the hearing which has been had this morning that bill has not been mentioned, and I am not aware whether it is now a pertinent subject of discussion. I should like to receive instructions upon that point.

Senator KEAN. Well, we will receive any suggestions you have to make in regard to it, only for information, however, not that this committee has anything to do with it.

Mr. JOHNSON. This bill provides that the Interstate Commerce Commission may order to take effect and to become operative thirty days after notice thereof has been given to persons directly affected thereby, certain rates; and it provides that thereafter these rates may be reviewed as to their lawfulness, justness, or reasonableness. I submit that it is contrary to our spirit of government to provide by law for putting into effect incidentally—practically incidentally, because the period allowed is short—a rate or any measure without the opportunity for a full hearing as to its lawfulness, justness, or reasonableness. Granting that in the wisdom of Congress it should be deemed necessary to place power over the making of rates in the hands of the Interstate Commerce Commission or any other body, it is of the utmost importance in my mind that those rates should be postponed in their operation until the fullest opportunity has been granted to determine whether they are lawful, just, or reasonable.

This bill places the rate-making power in one body and provides a separate tribunal to decide upon these essential matters of justice, reasonableness, and lawfulness. It appears to me that this is wrong; that the necessity for placing the rate making itself in the governmental body does not exist, but that if it should be decided that that necessity does exist, then by all means let us hedge around the power of making rate by such care, such provision, that the law with justness and reasonableness shall be enforced; that the Government is not compelled to take the position of attempting to do something which it can not do, attempting to perpetrate what is unjust or unlawful. I believe, gentlemen, that this suggestion, this proposed measure of putting the rate-making power into the hands of the Government, revolutionary as it is under our form of government, is a step toward what eventually will come to be Government ownership of railroads. I can conceive no greater calamity which can befall any country than that of having the railroads owned by the government.

I have had opportunity during my experience for intercourse with a great many railroad men from foreign countries, in which different degrees of government ownership or government control are in effect. I have yet to find any business man or any railroad man having experience under such regulations who was willing to admit that there is advantage in government ownership. In the Argentine Republic there is the closest control of Government operation. There the Government goes further than to fix rates. There all rates are fixed by Government, but, more than that, the Government undertakes to guarantee to the traveling public, so far as possible to guarantee it, its safety. No locomotive can go into the shop for general repairs and come out again upon the judgment of the railroad official. The Government has an inspector of locomotive repairs. That locomotive can not come out until this inspector has come and looked the locomotive over. It seems to me that this bill is a step in that direction of excessive governmental control. I believe most firmly and most conscientiously that the less government that is compatible with safety, with justice, with equal right to every man, is the best for the people at large. I believe that our country, which has developed so wonderfully, so that the rates which are made are lower than those enjoyed by any other country in the world, will continue to develop under private control of the railways and the rate-making power invested in those who know what the traffic costs, and who know all of the facts connected with the rate-making power.

Senator KEAN. We are very much obliged to you, sir.

STATEMENT OF MR. F. C. HENDRICKSON.

Senator KEAN (in the chair). What is your name?

Mr. HENDRICKSON. F. C. Hendrickson.

Senator KEAN. Where do you live?

Mr. HENDRICKSON. Cumberland, Md.

Senator KEAN. What is your business?

Mr. HENDRICKSON. I am an attorney at law, but I am secretary of the freight and transportation committee of Associated Merchants, which is practically our board of trade, made up of about 175 members, *nine-tenths* of them merchants, shippers, etc.

Senator KEAN. Will you kindly make your statement?

Mr. HENDRICKSON. I came to complain concerning coal discrimination, not high ratings. The Georges Creek coal region lies east of the Allegheny Mountains, in the extreme western part of the State of Maryland. Myersdale, Kingwood, and the Somerset regions lie on the west of the Allegheny Mountains, and the coals for eastern markets from those roads have to be hauled up heavy grades to the summit of the Allegheny Mountains and then down to and past the Georges Creek coal region, eastward. Now, gentlemen, we do not complain that we do not get as low a rate as Myersdale, Kingwood, and what may be called the upper Potomac region, but we are charged 15 cents more a ton to tide water for our coal than is charged these more distant regions, where the coal has to be hauled by very heavy cars and then down heavy grades. While that is an element of danger in railroading, I understand also——

Senator KEAN. What is the rate?

Mr. HENDRICKSON. It makes no difference what particular point—I have the schedule here—it is always 15 cents higher as soon as it reaches tidewater or the eastern markets, and we have a large amount of bituminous coal which can not be developed at the 15 cents differential. We do not object to the price.

Senator DOLLIVER. Why do they make this differential against you?

Mr. HENDRICKSON. I can only state what the Baltimore and Ohio officials, when they were petitioned, said, that other districts have poorer coals than ours, a compliment which we did not appreciate under these circumstances; and they object to letting our coal reach market as cheaply as these districts which they claim have poorer coal. Nevertheless, it shuts our region out entirely. It is practically a confiscation of our coal values, not our coal, but coal values, and that amounts practically to the same thing.

Senator DOLLIVER. They say your coal is better than the Kingwood coal?

Mr. HENDRICKSON. The big vein is almost exhausted, and we have a very large area of small-vein coal which corresponds to the small veins of West Virginia, Myersdale, and Kingwood, in adjacent States, but with the 15-cent differential against us we can not develop our coal at all.

Senator DOLLIVER. How far is it from Cumberland to the Kingwood region?

Mr. HENDRICKSON. Fifty to 75 miles farther west on the other side of the range.

Senator DOLLIVER. On the same road?

Mr. HENDRICKSON. On the same road, except the Cumberland and Pennsylvania is a little coal-carrying road, to take it to the Baltimore and Ohio. The majority of the stock is owned by the Baltimore and Ohio and they may be virtually called one road. At least, the officials themselves admit they own the majority of the stock.

There is one other complaint, although it may not be germane, perhaps, to this committee, but entering into our complaints is the fact that the Baltimore and Ohio Railroad, on which we have to depend entirely, is wholly exempt from taxation in the State of Maryland and does not pay one cent of taxes, and yet it charges

Maryland coal 15 cents more, when it is the nearest point to tidewater, than it does the more distant points.

The CHAIRMAN. Have you taken this case before the Commission?

Mr. HENDRICKSON. We have not; we have written them several times. We fear they will raise the technical point that it is over two roads.

The CHAIRMAN. You are afraid to submit the case to the Interstate Commerce Commission?

Mr. HENDRICKSON. No; we are going to do so finally, if we can not get redress otherwise. We have petitioned the Baltimore and Ohio by committees and by written petitions.

Senator KEAN. You do not mean to say that the Baltimore and Ohio is exempt from taxation entirely?

Mr. HENDRICKSON. Every cent. It does not pay anything to the State of Maryland, so far as I know. Yet it charges our coal 15 cents a ton more than it charges distant points.

Senator DOLLIVER. Have you a canal to tidewater?

Mr. HENDRICKSON. We have the Chesapeake and Ohio Canal, but it is not effective. The carrying capacity of it is too small.

Senator KEAN. Is it not only the road between Baltimore and Washington that is absolutely exempt from taxation?

Mr. HENDRICKSON. No; on its original charter it is exempt from taxation throughout the State, and even outlying lots and hotel property, and all property, is completely exempt from taxation.

That makes our complaint—I do not know whether it is germane to this committee, but that makes our complaint a little more accentuated. We do not want to tax them, but we do want fair rating for our coal.

Senator DOLLIVER. Do you use this canal at this time?

Mr. HENDRICKSON. The canal is practically under the control of the road.

Senator DOLLIVER. How does that come?

Senator KEAN. I think you will find you are a little mistaken in your statement as to taxation.

Mr. HENDRICKSON. If I am, I am willing to correct it.

Senator KEAN. Recently, as I understand it, the charter of the Baltimore and Ohio road did exempt it from taxation, but there was a compromise made between the State of Maryland and the Baltimore and Ohio road about 1874 or 1875, in which they agreed to pay taxes upon certain things, and certain things were exempted, but they do pay taxes.

Mr. HENDRICKSON. I do not think they pay them in any quantity. There were several charters which were prepared with the understanding that if they were adopted they would have to be taxed, but they never formally adopted them, and they are still operating under the old charter. It has been before our court of appeals, in which they held that hotel properties were not taxable. I know that up in our end of the State they do not collect a penny from the railroad. Now, that is our complaint, gentlemen.

Senator DOLLIVER. Is there any other railroad from Cumberland to tide water?

Mr. HENDRICKSON. None whatever. The Wabash will be there after a while, but it will not enter this coal field, according to its present holdings.

Senator DOLLIVER. How far from this coal field will it pass?

Mr. HENDRICKSON. It will pass within 100 feet, but still not have access to it, without additional holdings to what it has now.

Senator NEWLANDS. I understand you to say that the Baltimore and Ohio Railroad is interested in these coal mines beyond Cumberland?

Mr. HENDRICKSON. I did not say so; no, sir.

Senator NEWLANDS. I got the impression that you did.

Mr. HENDRICKSON. I think they control the waterway to the same extent they control the road. It is under trustees. It is ineffective. Even if they did not control the canal, it is not a sufficient competitor to make it material to the road.

Senator NEWLANDS. Is there any other waterway in which the Baltimore and Ohio Railroad is interested in that region?

Mr. HENDRICKSON. Why, I can not answer definitely as to that.

Senator KEAN. According to the statistics of railways of the United States, the Baltimore and Ohio paid $693,000 in taxes.

Mr. HENDRICKSON. Not to the State of Maryland, does it say, though?

Senator KEAN. In group. Of course, they have very little property other than in Baltimore and the road from Philadelphia to Baltimore.

Mr. HENDRICKSON. Does it give the amount of taxes it pays in the State of Maryland?

Senator KEAN. No; it is not divided here. But it gives it just in a lump.

Mr. HENDRICKSON. I would just like to say that it is not compatible with the business of the coal interests, as the operators look upon it, to go into litigation with railroads. There are many hazards outside of the mere judicial decisions, and the operators are very loath to go into litigation, and they will be very glad if something could be done to give them a prevention from litigation.

Senator DOLLIVER. What hazard?

Mr. HENDRICKSON. They think the matter of car supply all enters into it to a greater extent even than litigation. Whether they are correct in their surmise is another matter, but they hesitate, although suffering the greatest inequalities, to go into litigation with great corporations. It is not compatible with sound business interests, as I think you gentlemen will admit, to go into litigation on these matters; and something should be devised to prevent the trouble rather than the mere cure of it afterwards. It would be better for business interests in every way. I thank you.

STATEMENT OF MR. SAMUEL SPENCER.

The CHAIRMAN. Mr. Spencer, you have in your hand a statement which you wish to submit?

Mr. SPENCER. I will place before the committee a statement of my general views. There are a great many points which have been testified to affecting interests which I represent, but I will not go into them at this time.

The first question I desire to bring to the attention of the committee is the statement which was made on the 19th by Commissioner

Clements in respect to rates and regulations south of the Ohio and Potomac rivers, especially the fact that he filed with the committee a copy of the agreement bearing date of January 14, 1892, being the agreement of the Southern Railway and Steamship Association. I should not consider it necessary to refer to this, except that as the record stands this agreement is apparently presented as indicating a present condition of affairs. And that is emphasized by Mr. Clements's statement that he would be very glad to print it, "because it sets forth these facts just as they are." I am sure he did not mean that.

The facts are these: That agreement was made in 1892 and it was in effect for some time thereafter, but it was one of those agreements that was necessarily annulled by the trans-Missouri Association decision. Therefore it has absolutely no bearing upon any present situation. That decision was promulgated in March, 1897. Not only was the agreement annulled by that decision, but on the 22d of April, 1897, it was annulled by formal resolution of the association, and was never renewed. But in order that there may be no misunderstanding I would like to file with the committee the articles of association now in force in southeastern territory. They are as follows:

Articles of association of the Southeastern Freight Association.

For the purposes set forth in the following articles, the companies subscribing hereto form the Southeastern Freight Association.

ARTICLE I.

SECTION 1. An executive board is hereby created, composed of either the president, vice-president, general manager, or other officer of each member of the association, as designated annually by such member; but each officer thus designated may appoint any other officer or agent of his company, as proxy, with power to represent him at any meeting of said board.

SEC. 2. The executive board shall elect its own chairman. Said board shall also elect the chairman of the association, and shall fix his term of service and salary. All expenses of the association shall be subject to the review and approval of the executive board, or of a committee to be appointed by said board.

SEC. 3. The executive board shall meet upon the written request of two or more members thereof, or upon the call of its chairman.

SEC. 4. A majority of the members of the executive board, present or represented by proxy, shall constitute a quorum.

SEC. 5. It shall require the unanimous action of those present, in person or by proxy, to adopt any motion or resolution that may be made before the executive board.

SEC. 6. The executive board shall have power to reconsider any subject that may have been considered by the conference committee hereinafter provided for.

ARTICLE II.

SECTION 1. Each member of the executive board shall appoint a traffic officer of his company, and such traffic officers, thus appointed, shall constitute a conference committee. Any traffic officer appointed a member of the conference committee may appoint any other officer or agent of his company as proxy, with power to represent him at any meeting of said committee.

SEC. 2. Any member of this association proposing to make any change in its rates, rules, or regulations, will suggest the same to said conference committee for consideration and interchange of views before such change shall take effect; but it is distinctly understood that each member reserves to itself at all times the right to take separate and independent action on each and every subject, whether suggested to said conference committee or not.

ARTICLE III.

SECTION 1. Upon complaint to the chairman of the association that illegal devices have been resorted to, whether by secret rebates, or drawbacks, or payment of commissions, or underbilling of weights, or otherwise, he shall make an investigation thereof, and he or his representatives shall be given access to the records of all members of this association, so far as the same may pertain to the traffic with reference to which such complaint may have been made.

ARTICLE IV.

SECTION 1. The association expenses shall be apportioned fairly between the members by the executive board, and upon the basis so fixed by the board the chairman of the association shall have authority to collect the same.

ARTICLE V.

SECTION 1. Any member retiring from this association before the expiration of the time herein fixed, except by unanimous consent, shall not be released from its obligations to contribute its share of the association expenses, as the same may be fixed by the executive board.

ARTICLE VI.

SECTION 1. It shall be the duty of the chairman to preside at all meetings of the conference committee to keep the records of the association; to receive from each member of the association copies of tariffs or rates established by said member; to compile, print, and distribute such tariffs or rates in conformity with the interstate commerce act and other laws; to formulate and distribute such statistical information as may be called for by the conference committee or by the executive board, any expenses incurred in collecting such information to be apportioned among the interested members by the chairman of the association. Each member will furnish such reports of freight traffic and other statistical data as may be called for by the chairman of the association. The chairman shall also receive and list for discussion subjects coming before the conference committee, conduct all correspondence that may be necessary, and communicate such information as to the records of the association as may be requested by members and others interested.

SEC. 2. Each member shall, at the time of issue, file with the chairman of the association copies of all tariffs or rates that may be issued by such member and in which any other member may be interested.

ARTICLE VII.

SECTION 1. Nothing herein contained shall be so construed as to confer upon a majority, or any number of members of this association, the power or authority to make rates or tariffs upon the line of any other member of this association, or to make joint rates or tariffs for any other member. Nothing herein contained shall be so construed as to confer upon the executive board, or the conference committee, or the chairman of the association, or the chairman of the executive board, or upon any other committee or officer of this association the power or authority to make rates or tariffs upon the line of any member of this association, or to make joint rates or tariffs for any member of this association; it being distinctly understood that each member of this association expressly reserves to itself the exclusive power to make rates and tariffs on its own line, and to itself and its connections the exclusive power to make joint rates and tariffs, free from the dictation or control of any other member or members.

ARTICLE VIII.

SECTION 1. The articles of this association shall relate to the territory lying south of the Potomac River to the Virginia-West Virginia State line, then via said line to Bristol, Tenn., through and including Middlesboro, Ky., Jellico and Harriman Junction, Tenn., to and including Chattanooga, Tenn., and on and south and east of a line from Chattanooga, Tenn., via the Alabama Great South-

ern Railroad to Birmingham, Ala., thence via Southern Railway to and including Selma, Ala., thence via Western Railway of Alabama to and including Montgomery, Ala., thence via the Atlantic Coast Line Railroad through Valdosta, Ga., Jasper, Live Oak, and Lake City, Fla., to Jacksonville, Fla., including points on the line from Montgomery to Jacksonville, thence via the South Atlantic Seaboard to the Potomac River. Said articles shall relate to the rail lines and steamship lines which are now, or may hereafter become, members of this association.

SEC. 2. Said articles shall relate to traffic having origin or destination within the territory above defined, in which two or more members of this association may be interested, except that said articles shall not relate to traffic between any two points north of the Virginia-North Carolina State line; nor to traffic between points on the designated northern and western boundary lines and points outside of the territory as above defined; nor to traffic from or through North Atlantic ports to South Atlantic ports proper or from South Atlantic ports proper to or through North Atlantic ports; nor to coke and bituminous coal.

ARTICLE IX.

SECTION 1. No change shall be made in these articles of association except by consent of each member of the association.

ARTICLE X.

SECTION 1. These articles of association shall become effective the 1st day of May, 1904, and continue in force until April 30, 1905.

Western and Atlantic Railroad, By H. F. Smith, Traffic Manager; Southern Railway, By J. M. Culp, Fourth Vice-President; Chas. A. Wickersham, Atlantic and West Point and Western of Alabama; Georgia Railroad, By Thos. K. Scott, General Manager; Georgia Southern and Florida Railway, By Wm. Checkley Shaw, Vice-President, per J. M. C.; Macon and Birmingham Railway, By Wm. Checkley Shaw, Vice-President, per J. M. C.; Old Dominion Steamship Company, By W. L. Guillaudeu, President; Atlantic Coast Line Railroad Company, By T. M. Emerson, Third Vice-President; Charleston and Western Carolina Railway, By T. M. Emerson, Traffic Manager; New York and Texas Steamship Company (Bwick service), By H. H. Raymond, Superintendent; W. A. Winburn, Vice-President and Traffic Manager, for Central of Georgia Railway Company; Reuben Foster, President, for Chesapeake Steamship Company; Jno. R. Sherwood, Vice-President and General Manager, for Baltimore Steam Packet Company; Theo. G. Eger, for the Clyde Steamship Company; Ocean Steamship Company, By W. H. Pleasants, Vice-President and General Manager; Merchants and Miners' Transportation Company, By J. C. Whitney, Second Vice-President and Traffic Manager; Seaboard Air Line Railway, E. F. Cost, Second Vice-President; Norfolk and Western Railway, By L. E. Johnson, President; Atlantic and Birmingham Railway Company, By H. C. McFadden, General Freight Agent; Jacksonville and Southwestern Railroad, By E. S. Spencer, Secretary and General Manager; Florida East Coast Railway Company, J. P. Beckwith, Traffic Manager; Georgia, Florida and Alabama Railway Company, By J. P. Williams, President; Atlanta, Knoxville and Northern Railway Company, By J. H. Ellis, Vice-President and General Manager; Columbia, Newberry and Laurens Railroad Company, per W. G. Childs, President; Virginia and Southwestern Railway, By Jno. B. Newton, Vice-President and General Manager; Wrightsville and Tennille Railroad Company, By A. F. Daley, President.

There is no agreement as to division of territory, there is no agreement as to rates, there is no agreement as to concerted action. What there is is an organization where the current questions of the day can be discussed between these lines, but with absolute provision that each one reserves to itself its right of individual action.

In the hearings of May 16, a statement was made with reference to a lease of the Mobile and Ohio Railroad by the Southern Railway

Company, and it was referred to as a notable instance of a system of overcapitalization, and the consequent raising of rates as the result of a lease. The facts are these: The Southern Railway Company has never leased the Mobile and Ohio Railroad. It did purchase the stock, and for every hundred dollars of stock—that is, for every share of the Mobile and Ohio which it purchased—it issued its own security, dollar for dollar, and deposited the stock of the Mobile and Ohio Railroad as a security therefor. There was not one single dollar of overcapitalization.

It is true that on a sliding scale, and not from the beginning, as indicated in the testimony, the Southern Railway Company did agree to pay interest or dividends at 4 per cent upon the securities which it issued. The fact is that that amount has never been received by the Southern Railway Company, and it has lost that difference so far, or a large proportion of it. Last year it got 2 per cent, having paid 4 to its own security holders. This statement is made also that the rates were gradually increased, and then two specific instances are cited, namely, that the timber rates were put up 15 per cent, and those on cotton-mill products were put up 20, the inference being that that was the result of the purchase of the stock of the Mobile and Ohio, which road was not a competing line with the Southern. Now, the lumber rates went up under an action which has been referred to here a great many times, namely, that the rates on yellow-pine lumber over the whole southern country were more than a year ago put up 2 cents a hundred pounds. In some cases that did amount to as much as 15 per cent, but it was very rare. The fact is, the Mobile and Ohio originates a very small proportion of that total lumber trade to which the increase applies. That question went through the Interstate Commerce Commission and into a court, but there has been no court decision in respect to it, and two members of that Commission have, on the final hearing, decided the increase in rates was entirely reasonable by reason of the changed conditions. The higher price of lumber, and the fact that it was a restoration of only a portion of a reduction which had been made previously when the lumber trade was dull, fully justified the increase.

The purchase of the Mobile and Ohio stock by the Southern had absolutely no bearing upon that question. The Mobile and Ohio was a very small factor in the whole situation, and the increase was made by the Illinois Central, the Louisville and Nashville, the Atlantic Coast Line, the Plant System, the Southern, and every other system in that country, all of those which I have mentioned being competitive.

As to the freight rates on the mill products referred to as having been increased 20 per cent, there have been practically none. There are no cotton mills on the Mobile and Ohio Railroad of any consequence, and there has been no increase. There has been no general increase of rates. There was an adjustment of rates, if you might call it so, because many rates, when we secured possession of the Mobile and Ohio Railroad, we found were being made on secret agreements and rebates, and these were all wiped out and other irregularities were corrected.

I will refer to the third item that I wanted to bring to your attention, and that is Mr. Knapp's statement, in effect, before you, that he found himself questioning the sincerity of the advocacy of a regulation of rates through the courts. Now, I want to say, very briefly,

that as far as I am aware the railroads are not advocating a regulation of rates through the court. It is not regulation. The claim in respect to the court is simply this, that if a question which is certainly judicial has to be passed upon in respect to the reasonableness or unreasonableness per se of a rate, that the only competent authority to pass upon it is the court, and if the carriers are deprived of having that question of the reasonableness or unreasonableness per se of a rate passed upon by a court, and the rate shall take effect prior to its being passed upon by a judicial tribunal, that then their property is not protected.

Railroads, so far as I know, have not put that argument forward under any guise of its being a regulation of rates. There was no such attempt. It was simply a claim in fairness and justness that a judicial question which affects the value of property shall be passed upon by a judicial tribunal before a decision takes effect. I only want to put in a protest on behalf of the railroads, that they are not advocating here, as indicated, any regulation through courts for the purpose as distinctly indicated in that testimony, that as the court could not regulate, therefore there could not be any regulation at all. Our position has been construed into meaning an evasion of the whole question of regulation. That is not the question of the railroads in this country at all.

Senator NEWLANDS. Mr. Spencer, in that connection I would like to ask you if the railroads would favor the substitution by the Commission of a reasonable rate, or what it regards as a reasonable rate, for a rate that has been condemned as unreasonable, provided that rate does not take effect until the courts have had a chance to act upon it?

Mr. SPENCER. I understand that is practically the position to-day. They have the power to condemn a rate. They have the power to pronounce it unreasonable and unjust.

Senator NEWLANDS. But they have not the power now to substitute what it regards as a reasonable rate?

Mr. SPENCER. No, sir.

Senator NEWLANDS. Now, would you concede that power, provided that the rate which they fix does not go into effect until the final determination of a court is reached?

Mr. SPENCER. If you ask me my personal opinion, I will say I do not think it ought to be done, because it is substituting their judgment for that of the owner of the property. As I have said on one or two public occasions, the railroads will have at last to do whatever public opinion and Congress decides on this question. Their rights might be reasonably protected under such a provision as that, if otherwise properly safeguarded.

The CHAIRMAN. Will you submit the statement?

Mr. SPENCER. I will hand it to the secretary afterwards, if the chairman will permit me.

Senator NEWLANDS. I would like to ask you a few questions, Mr. Spencer, regarding the Southern Railroad System. Does that corporation own the stock of other corporations?

Mr. SPENCER. Yes, sir.

Senator NEWLANDS. How many others?

Mr. SPENCER. Three important ones, some unimportant, but none of them large. They are not operated as a part of the Southern.

Senator NEWLANDS. That are not operated as a part of the system?

Mr. SPENCER. That is, they are separate corporations. They are in the system, but operated separately.

Senator NEWLANDS. Does it own all the stock of those corporations?

Mr. SPENCER. No, sir; substantially all of the Mobile and Ohio, and a majority of the stock of the other two important ones, which are the Alabama and Great Southern and the Georgia Southern and Florida.

Senator NEWLANDS. Under the law of what State is the Southern Railway Company incorporated?

Mr. SPENCER. Under the laws of the State of Virginia.

Senator NEWLANDS. In how many States does that company operate?

Mr. SPENCER. Eleven.

Senator NEWLANDS. The two other great systems of the South are the Louisville & Nashville and the Seaboard Air Line, are they not?

Mr. SPENCER. And the Illinois Central.

Senator NEWLANDS. Now, how about the Louisville and Nashville and the Seaboard Air Line; have they come together?

Mr. SPENCER. No, sir; not to my knowledge.

Senator NEWLANDS. They are not united. How about the Southern Railroad and the Seaboard Air Line?

Mr. SPENCER. They have no corporate relation whatever. They are distinctly competitors.

Senator NEWLANDS. How about the Atlantic Coast Line? Has it purchased the stock or the control of any other system?

Mr. SPENCER. It has purchased the stock of the Louisville and Nashville Railroad, as I understand it.

Senator NEWLANDS. Recently?

Mr. SPENCER. Oh, two or three years ago.

Senator NEWLANDS. Does it own all the stock of that company?

Mr. SPENCER. I am quite sure it does not. You understand, I am talking about a subject with which I have no personal or official relation whatever. What I say now is public information.

Senator NEWLANDS. Do you think it likely that all these railways will some time be consolidated into one system?

Mr. SPENCER. I regard that as impossible, unless the State laws are changed.

Senator NEWLANDS. If it were practicable, would you regard it as desirable?

Mr. SPENCER. That is further ahead than I have ever thought. I have not spent any time looking at things that I knew could not happen.

Senator NEWLANDS. Then you are not prepared to give your judgment regarding that?

Mr. SPENCER. No; the judgment would mean nothing. I do not think anything would be gained by it, particularly.

Senator NEWLANDS. Those roads now are all in active competition, are they not?

Mr. SPENCER. The three you have mentioned are.

Senator NEWLANDS. They are all reaching in substantially the same territory?

Mr. SPENCER. Yes, sir; in large measure.

Senator NEWLANDS. Now, if they were to consolidate, would that

change the rates with some intersecting point, and rates for the local points disappear?

Mr. SPENCER. No, sir; I do not think they would disappear. That is, they have been determined by a great many conditions besides the separate ownership of two railroads which happen to touch at that point.

Senator NEWLANDS. As a rule, where there is one station served by two or three competing lines, does not that station have a less rate than merely local points on either one of the three lines?

Mr. SPENCER. There are some such cases. That is not the universal rule.

Senator NEWLANDS. Well, is it not nearly the universal rule?

Mr. SPENCER. I should say not for the whole country.

Senator NEWLANDS. How about the southern country down there?

Mr. SPENCER. The southern country relatively has as much of that condition of affairs as any other. The rates for the southern country have grown up in a peculiar way, and the rates for the southern country, so far as the long and short hauls are concerned, were probably less disturbed by the passage of the interstate commerce act than in the more thickly populated places and those sections of the country which were not cut up by navigable waterways to the extent the southern country is. Nearly all of the rates in the South have been made to a large extent by water transportation.

Senator NEWLANDS. By water competition?

Mr. SPENCER. Yes, sir; by water competition. And therefore there are high points in the interiors as against the low rates on the water. Now, relatively there is more water competition in the Southern States east of the Mississippi and south of the Potomac and Ohio rivers, and the interior, than in any other section of the United States, and the rates reflect that condition.

Senator NEWLANDS. Well, is there any portion of the competition that has been created simply by the competition of railways, and has that competition been recognized by giving the competitive points preferential rates?

Mr. SPENCER. To a very small extent, if at all.

Senator NEWLANDS. But it has to some extent?

Mr. SPENCER. Well, possibly; I would not say no, but it is not important.

Senator NEWLANDS. So that down there the inequality of conditions between points of shipment would not be relieved at all by the consolidation of the railways?

Mr. SPENCER. It might be changed some.

Senator NEWLANDS. Does not most of your complaint down in that region come from those inequalities rather than from claims that rates are unreasonably high?

Mr. SPENCER. I do not think we have any complaint of the unreasonableness of rates per se.

Senator NEWLANDS. Per se. Almost all of your complaints are regarding those alleged inequalities between communities, are they not?

Mr. SPENCER. Yes, sir.

Senator NEWLANDS. You think that railroad consolidation does tend to the relief of that, do you not?

Mr. SPENCER. To the relief?

Senator NEWLANDS. Yes; of those inequalities.

Mr. SPENCER. It has operated in that way in many cases.

Senator NEWLANDS. And you think it would be greater down there if it were not for the fact——

Mr. SPENCER. No; I do not think it would more. You say "relief," but I do not quite accept that expression about it. I mean changed. I do not think there is anything demanding relief, in that sense. I think the situation, taking it in general, is a logical one, and the rate has been fixed by water transportation, and is not due to the fact that two or more railroads reach the same point and only one reaches other points.

Senator NEWLANDS. That is not true, however, in most sections of the country, is it?

Mr. SPENCER. It is true to a greater extent in the South than anywhere else, by reason of the water competition I have described.

Senator DOLLIVER. Mr. Spencer, I do not get clearly your idea of the effect of issuing the stock of the Southern Railroad for buying a controlling interest in the stock of the Mobile and Ohio Railroad. You said that did not operate to water the stock?

Mr. SPENCER. It does not.

Senator DOLLIVER. Now, how much stock of the Southern Railroad was necessary to buy a controlling interest in the Mobile and Ohio?

Mr. SPENCER. Well, I will give you the exact figures, and I will have to correct one expression which you used. The Southern Railroad Company did not issue stock to buy the Mobile and Ohio stock. It issued what is specifically shown on the face of it as a stock trust certificate. That is, we issued our paper for a hundred dollars for each share of stock of $100 par of the Mobile and Ohio. We took the certificate of stock of the Mobile and Ohio, a hundred dollars, into our treasury, and we issued to the owner of that stock a stock trust certificate for $100. Now, he had just the same amount of par that he had before, and we had the certificate in our treasury and not in the hands of the public at all.

Now, to give the exact figures, we issued six millions—that is, within a few hundred dollars—of Southern Railway stock trust certificates and took from the owners of the Mobile and Ohio stock six millions of Mobile and Ohio stock. Now, we own that stock.

Senator DOLLIVER. Now, in the payment of dividends of the Mobile and Ohio stock you receive the share of dividends that arises from the stock you purchased?

Mr. SPENCER. Yes; we receive that.

Senator DOLLIVER. What guarantee for dividend-paying purposes do these certificates have?

Mr. SPENCER. We guarantee, after a certain time, and that time has passed those stock trust certificates would bear 4 per cent interest.

Senator DOLLIVER. Now, then, that leaves you in the attitude of paying a dividend upon your Mobile and Ohio stock, and in addition to that your property is encumbered to the liability of 4 per cent on these stock trust certificates?

Mr. SPENCER. If we collect 4 per cent from the Mobile and Ohio Railroad, we simply take it over and give it to the stock trust certificates, and it merely passes through our hands. That is, the holder of our stock trust certificates, assuming that the Mobile and Ohio could *pay 4 per cent*, is in exactly the same position as if he had held

his Mobile and Ohio stock—namely, he gets 4 per cent in either case, and we get nothing.

Senator DOLLIVER. That is very much plainer, because originally I thought you said you issued——

Mr. SPENCER. I intended to say, Senator, that we issued a security.

Senator NEWLANDS. It bears a fixed rate of interest?

Mr. SPENCER. It bears a fixed rate of interest after a certain date.

Senator NEWLANDS. And you have to pay that whether you get dividends from the Mobile road or not?

Mr. SPENCER. We have to pay that whether we get it or not.

Senator NEWLANDS. At the time you issued the certificates of the Southern Railway for the Mobile and Ohio Railway, what was the value of the Mobile and Ohio Railway stock?

Mr. SPENCER. It was selling between fifty and sixty.

Senator DOLLIVER. Suppose the Mobile and Ohio, in prosperous times would run 7 or 8 per cent, what would become of it?

Mr. SPENCER. We would get the profit. That is, it is on the same principle that if I have bought a house that was bringing in a low rent when I bought it, and it brings in a higher rent later, I would get the benefit of it. I put a mortgage on it in the meantime, on which I paid 4 per cent, and I paid that for a while——

Senator DOLLIVER. Your idea is that this interchange of securities does not operate to water the stock of either of the companies?

Mr. SPENCER. No, sir. The outstanding amount in the hands of the public is exactly the same in the two cases, to a dollar.

Senator FORAKER. Your certificate is only an obligation of indebtedness?

Mr. SPENCER. Only an obligation, with the other stock pledged as security.

Senator FORAKER. Have you a provision in the trust certificate for its redemption?

Mr. SPENCER. No, sir. This stock trust certificate is perpetual. The only thing is, that if we defaulted, then they could take possession of the Mobile and Ohio stock, and still hold us liable for any difference.

Senator NEWLANDS. Would it simplify the operations of your system if you incorporated under a national law permitting the use of stocks and bonds?

Mr. SPENCER. Well, I assume our stock and bonds would have to remain as they are.

Senator NEWLANDS. Your bonds wold have to remain out, as they are, undoubtedly, until they had matured and others were retired?

Mr. SPENCER. The stock would have to remain out too, unless the owners consented to turn it in.

Senator NEWLANDS. I mean, all other things being equal, would it simplify the operation of these great systems of railways that are operating in eight or ten States, if they could operate under a national law?

Mr. SPENCER. In some particulars; if they could be successfully carried out it would simplify it, undoubtedly.

I desire to submit herewith the remarks to which I referred:

It has been said by a distinguished jurist: "The railroad man has his hour of opportunity now. Let him join our President in establishing a tribunal through which the nation's power can be honestly, but at all times promptly

and adequately, exercised. That will bring peace with justice. No other peace would last."

At no time has the President's intention been to advocate governmental regulation of railways which would inflict injury upon the investments in the properties or impair the usefulness of the carriers to the public. He has never advocated, and he can be trusted never to advocate, the adoption of any regulation which does violence to the fundamental principles on which the Government is founded.

If a tribunal which will answer the description can be organized, or if methods can be found--and I belive they can be without the necessity of an additional and special tribunal for the purpose—by which the great railway questions of the day can be settled in accordance with law and equity, and in accordance with those fundamental principles of government which are guaranteed by the Constitution, I speak with authority when I say that substantially every railway manager in the country will subscribe to that view, and aid in the accomplishment of the desired results.

The difficulties of adjustment, therefore, lie not, as has been so often claimed, in any obstructive or defiant attitude of the railway manager. They rest fundamentally in the anomalous condition in which the carriers are placed under the law; in those suggestions of remedy which, failing utterly to reach the evils sought to be cured, would punish unwisely and unnecessarily the innocent along with the guilty; and in those suggestions which look to the separation of one particular class of property from all others, to be dealt with invidiously by special tribunal and by special methods.

It is not reasonable regulation to which the carriers object; it is to unwise and unfair regulation. It is not the regulation which seeks directly to remedy known and tangible evils, but it is the so-called regulation which, while ostensibly attacking one evil or class of evils, inflicts unknown and unjustifiable injuries upon those who are not offenders; and that which undertakes unnecessarily to interfere with the legal and beneficial freedom of commercial action and enterprise, and thus to diminish the future usefulness of the carriers, and impede the material development of the resources of the country. It is not the regulation which improves, but it is the regulation which confuses and retards.

The term "regulation" is so broad that it has been made to include almost every device for dealing with commerce or with the carriers. It embraces, however, two main features, which, if justice is to prevail, must always be considered and treated separately.

Rebates and secret contracts, extortions, and unjust discriminations are crimes under the law, and, as such, call for punishment through the courts, not the exercise of discretion by a nonjudicial body.

The regulation or control by Government of the charges of carriers for services performed is an entirely separate and distinct matter, and involves considerations of business judgment and experience; the rights of property as well as the rights of the people; and of that discretion in the management of property which should always be left with the owner so long as its use is consistent with law and equity.

It is in respect to this phase of regulation that a wide departure from reasonable safeguards, if not from the fundamental principles of Government, seems to be threatened, and against which the carriers have made protest.

The President, in his message to Congress in December, announced in no uncertain terms that "the rebate, the secret contract, the private discrimination must go," and that "the highways of commerce must be kept open to all on equal terms." The country as a whole, including the owners and the managers of railway properties, zealously supports him in this declaration of purpose. When the Elkins law was passed it is well known that not a single carrier in the country raised the slightest objection, and not one objects now to any provision of law which will aid in accomplishing this declared purpose of the President.

But the Townsend bill, which passed the House of Representatives at the last session, contained not a single provision for dealing with these or kindred abuses, nor was any bill presented or suggested which could be construed as having that most desirable end in view.

The President's specific recommendation that the Commission be vested with power, where a given rate has been challenged and found to be unreasonable, to decide, subject to judicial review, what rate shall take its place, and to put that rate into effect, was most wisely qualified by the statement that "at present it would be undesirable, if it were not impracticable, to finally clothe the Commission with general authority to fix railroad rates."

And yet substantially every bill which has been presented in Congress looking to granting increased powers to the Commission has been so drawn that the ultimate and necessary effect of its provisions, if enacted into law, would be to "finally clothe the Commission with that general authority" which the President, in his conservatism, pronounces "undesirable, if it were not impracticable."

Such enactments would not be "regulation." They would mean incipient, if not final, control of the sources of revenue of all the carriers, and that, it is safe to say, the President never intended.

They might easily mean the taking of property or the diminution of its value without due process of law or without compensation to the owners.

The effect of such regulation undoubtedly would be the curtailment of future railway construction and improvements, not only by reason of the impairment of railway credit, but also from the unwillingness of investors to own or to enlarge properties the revenues of which would be practically under governmental or political control and the expenses still be subject to the uncertainties of industrial conditions.

The railways of this country are chartered and exist to perform certain public services, and they represent, with a few isolated exceptions, the investment of private capital.

The relations of the carriers to the Government assume, therefore, the dual character of those of public servants upon the one hand, and, upon the other, that of property of enormous cost entitled, like all other property and equally with it, to governmental protection.

The railways are public carriers for hire, entitled to just and reasonable compensation for services performed. Railway charges are not, as it has been sometimes erroneously asserted, a tax upon the public or upon the individuals or industries or commerce served by the carriers. A tax is a levy placed upon all for the support of the Government and from the payment of which no citizen is or should be exempt. The railway charge is paid only by those who voluntarily use the facilities which have been provided at the cost of others.

The railway system of the country has become so vast, and the volume of interstate traffic so enormous in comparison with the intrastate, that the relations between these carriers and the General Government now overshadow in the public mind those between the carriers and the States from which the charter rights are derived.

The rapid growth of the railway system from 35,000 miles in 1865 to 212,000 miles in 1905 was a necessary accompaniment, if not the chief means of promoting the marvelous development of industry and population and wealth which have marked that period.

The demand for Federal regulation had its first formal manifestation in the enactment in 1887 of the act to regulate commerce, under which the Interstate Commerce Commission was appointed, with its new, its complex, and its anomalous powers.

The chief purposes of the act were to suppress rebates and unjust discriminations between individuals, localities, and classes of traffic, and to provide, through the appointment of a Commission, for the detection and eradication of such abuses and for the prosecution and punishment of those found guilty of violating the statute.

Under the provisions of the act much good has been accomplished. Despite occasional but persistent statements to the contrary, the evil of rebates, secret contracts, and unjust discriminations has almost entirely disappeared.

The great volume of traffic throughout the country moves under published tariffs, accessible to all. Reports of operations of all the carriers subject to the act and statements of their finances are made from a uniform standpoint and are published to the world.

For eighteen years, since the appointment of the Commission, 90 per cent of all of the complaints which have been made to it by the public against the carriers have been adjusted without even formal hearing. Of the remaining 10 per cent, which have been the subject-matter of formal findings by the Commission, four-fifths of the findings have been acquiesced in by the carriers, leaving only one-fifth of 10 per cent—that is, 2 per cent of the total complaints—to be litigated between the Commission, or the complainants and the carriers.

None can claim that this does not mark wholesome and far-reaching progress in the regulation of railway transportation. Perfect results can never be obtained. Gratifying as those are which have been secured, they might have been far greater if certain manifest defects in the law had either been avoided or corrected, and if the efforts of the Commission had been directed more specifically to the curing of the evils for which it was appointed instead of

endeavoring to secure powers which it was never intended to exercise and which are incompatible with its existing functions.

With the revival of industrial and commercial activity in 1897 the railways were congested by the increased volume of traffic for which they could not be suddenly prepared. The available facilities were inadequate for the demands of the public. Delays and claims and losses were incurred. These and other potent influences served to revive the clamor against the carriers, and this was soon reflected in political campaigns, upon the hustings, and in legislative halls. The clamor was largely indiscriminate and misguided. The existence of evil was in many cases more assumed than real. Numerous remedies were suggested, but all took the form of that perennial cure for modern maladies—additional legislation.

The cry arose that "something must be done," but there was a woeful lack of searching thought of what that something should be.

Rebates and secret and unjustly discriminatory devices were justly denounced, but with no show of increased vigor in the application of those means already provided for their suppression.

With numerous bills pending in Congress variously devised for the regulation of railways, but nearly all carrying that insidious feature always so skillfully injected, granting to the Commission power to make rates, there was finally evolved and passed at the close of the Fifty-seventh Congress the wise and effective measure known as the Elkins law. It was aimed directly at the real evils and went straight to the mark. It was hailed with satisfaction by the Administration, by the public, and by the railway managers, and it has indirectly accomplished a large measure of success, but its possibilities for good have not only not been exhausted, but have scarcely been entered upon.

Nevertheless, the question of additional legislation has again become acute before the public and in Congress, and this acuteness has been enormously emphasized by misinterpretations of the recommendations of the President.

In response, advocates of increased power for the Commission have returned to the attack with renewed vigor, armed chiefly with the same old ammunition of abusive criticism and garbled statistics and inflammatory generalities appealing to popular prejudice.

It is charged that rates are extortionate and must be lowered, and yet the rates in this country are only from one-half to one-third of those in countries with which the producers of the United States must compete in the markets of the world, and wages of railway employees are 50 per cent higher than the highest elsewhere, and in eighteen years the Interstate Commerce Commission has not succeeded in establishing in the courts a single case of rates unreasonable in themselves.

The fact that the average rate per ton-mile for the entire tonnage of the United States rose less than four-tenths of a mill from 1899 to 1903 is paraded as evidence of extortion, but the fact that the average rate for all tonnage does not necessarily mean increased tariff rates is adroitly not mentioned, nor is the fact that even the average rate in 1903 was less than it was during the depressed years of 1894, 1895, and 1896, and was 19 per cent lower than it was in 1890, 38 per cent lower than it was in 1880, and 60 per cent lower than it was in 1870. The all-important fact is also studiously ignored that from 1899 to 1903 the cost of railway labor rose 12 or 15 per cent, the price of materials consumed in railway operation increased 25 or 30 per cent, while even the nominal average rate, which may mean so little, increased less than 7 per cent.

Thus, on a partial and one-sided statement, the shout is raised that the country's welfare in agriculture, in industry, and in commerce is threatened by railway rapacity, but the indictment fails when confronted with the facts and in the light of the prosperity and growth of industry and wealth within that period in every State and every city and every village in this broad land—a prosperity and growth unparalleled in the history of the industrial world.

When the charge of rate extortion per se fails, the cry is raised that rates are unreasonable and unjustly discriminatory between localities. Again the records of the Commission illumine the misty statements which are promulgated to the public.

In the eighteen years of its history the Commission's condemnations of rates relatively unreasonable between localities, not acquiesced in by the carriers, have been at the rate of only two cases per annum, out of the almost innumerable rates in effect, the number and complexity of which are indicated by the fact that an average of 130,000 tariffs per annum have been filed with the Commission by the carriers during that period. Out of the average of less than

his Mobile and Ohio stock—namely, he gets 4 per cent in either case, and we get nothing.

Senator DOLLIVER. That is very much plainer, because originally I thought you said you issued——

Mr. SPENCER. I intended to say, Senator, that we issued a security.

Senator NEWLANDS. It bears a fixed rate of interest?

Mr. SPENCER. It bears a fixed rate of interest after a certain date.

Senator NEWLANDS. And you have to pay that whether you get dividends from the Mobile road or not?

Mr. SPENCER. We have to pay that whether we get it or not.

Senator NEWLANDS. At the time you issued the certificates of the Southern Railway for the Mobile and Ohio Railway, what was the value of the Mobile and Ohio Railway stock?

Mr. SPENCER. It was selling between fifty and sixty.

Senator DOLLIVER. Suppose the Mobile and Ohio, in prosperous times would run 7 or 8 per cent, what would become of it?

Mr. SPENCER. We would get the profit. That is, it is on the same principle that if I have bought a house that was bringing in a low rent when I bought it, and it brings in a higher rent later, I would get the benefit of it. I put a mortgage on it in the meantime, on which I paid 4 per cent, and I paid that for a while——

Senator DOLLIVER. Your idea is that this interchange of securities does not operate to water the stock of either of the companies?

Mr. SPENCER. No, sir. The outstanding amount in the hands of the public is exactly the same in the two cases, to a dollar.

Senator FORAKER. Your certificate is only an obligation of indebtedness?

Mr. SPENCER. Only an obligation, with the other stock pledged as security.

Senator FORAKER. Have you a provision in the trust certificate for its redemption?

Mr. SPENCER. No, sir. This stock trust certificate is perpetual. The only thing is, that if we defaulted, then they could take possession of the Mobile and Ohio stock, and still hold us liable for any difference.

Senator NEWLANDS. Would it simplify the operations of your system if you incorporated under a national law permitting the use of stocks and bonds?

Mr. SPENCER. Well, I assume our stock and bonds would have to remain as they are.

Senator NEWLANDS. Your bonds wold have to remain out, as they are, undoubtedly, until they had matured and others were retired?

Mr. SPENCER. The stock would have to remain out too, unless the owners consented to turn it in.

Senator NEWLANDS. I mean, all other things being equal, would it simplify the operation of these great systems of railways that are operating in eight or ten States, if they could operate under a national law?

Mr. SPENCER. In some particulars; if they could be successfully carried out it would simplify it, undoubtedly.

I desire to submit herewith the remarks to which I referred:

It has been said by a distinguished jurist: "The railroad man has his hour of opportunity now. Let him join our President in establishing a tribunal *through which* the nation's power can be honestly, but at all times promptly

and adequately, exercised. That will bring peace with justice. No other peace would last."

At no time has the President's intention been to advocate governmental regulation of railways which would inflict injury upon the investments in the properties or impair the usefulness of the carriers to the public. He has never advocated, and he can be trusted never to advocate, the adoption of any regulation which does violence to the fundamental principles on which the Government is founded.

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two cases per annum, or thirty-five cases in eighteen years, the judgment of the Commission has been reversed by the courts in all cases but two.

The Townsend bill provided that a rate once fixed by the Commission should continue in force indefinitely unless changed by the Commission or by the court. Under such law all rates would in time become Commission's rates, and the functions of railway managers in adjusting rates to meet commercial conditions and in extending the sphere of usefulness of the transportation system of the country would, step by step, come to an end. Slow but steady paralysis would creep into the industrial arteries through which the blood of commerce flows, and the transportation system would gradually become numb and rigid. The present activities of railway managers would be eliminated as an agency in the intelligent development of the resources of the country. Rates would soon be machine made only, and commercial and industrial centers, now acknowledging no bounds for the ultimate distribution of their products, would find themselves operating in narrower and narrower zones, finally circumscribed by governmental edicts as to where their wares should go.

The annulment of a rate, as provided for in the Townsend bill, upon the Commission's decision that it was unreasonable or unjust, and the making of that rate effective prior to review, would be to give to the findings of the Commission the force of the judgment of a court. If rates are unjust or unreasonable, they are illegal, but punishment for their illegality should not in fairness or in law be inflicted in the form of reduction or otherwise until a court of competent jurisdiction shall have passed upon the question. The right of review by court is inherent, and can not be denied, but the carrier is not fully protected in that right if penalty be inflicted pending the review.

To also authorize the Commission to name in substitution a new rate and to enforce it is to lodge, in the same tribunal which has acted as a court, an additional power which is purely legislative.

Congress, after prolonged investigation and extended debate, carefully and wisely avoided in the act to regulate commerce the delegation of these mixed and dangerous powers to one body, and it would be wholly antagonistic to the principles of our Government thus to unite them, and it would add to the injustice to have the force of the combination directed solely toward the regulation or control of one class of property.

The assertion that the power sought by the Commission and provided for in the Townsend bill does not include the right to initiate rates or to make tariffs, but merely after complaint and hearing to correct an unjust and unreasonable rate, is specious and misguiding.

The condition precedent of a complaint amounts to nothing. Complaints can always be had with or without the bidding, and with the power to fix a rate lodged in a body not responsible to the owners of the property, complaints will soon be more numerous than the locusts of Egypt. The right to name one rate is the right to name a thousand, and in the end will be the right to name all. In the famous Maximum-Rate case, where the Commission claimed the power now sought to be conferred, it did actually in one order name and attempt to enforce several thousand rates.

One reason assigned for granting specific rate-making powers to the Commission is that of long delays incurred in reaching conclusions between the carriers and the public. I again revert to the potent fact that 90 per cent of all of the complaints which have been made by the Commission have been adjusted without the formality of a hearing. It is easily susceptible of proof that the chief delays in the remainder are delays in the hearings and in the findings of the Commission. The delays in the courts are only those which necessarily belong to the safe and orderly administration of justice.

One of the chief purposes, and what should be one of the chief results, of the Elkins law of 1903 is expedition in all court proceedings instituted by or on behalf of the Commission against the carriers, and yet the significant fact stands out that there has been no indictment, no prosecution of a single individual or of a single corporation under the terms of that act now in force for more than two years. If the passage of that law, with its drastic remedies, and its almost summary methods of procedure, does not expedite the trial of offenders against the interstate-commerce law, what can be the effect of any additional legislation for similar ends?

The delays complained of are added to, however, by the numerous and complex and sometimes conflicting duties performed by the Commission. It is a statistical bureau, an investigator, a prosecutor; it performs quasi-judicial functions in hearing complaints, and in the approval or condemnation of rates; it

is charged with the supervision of the equipment of the railways in respect to safety appliances, and it is its duty to collect and classify information in respect to railway accidents. It has voluntarily assumed the position of an advisory board in respect to the broad and grave questions of differentials between Atlantic ports, and while instructed by the act under which it serves to make practical recommendations to Congress as to additional legislation needed for the regulation of the railways, some of its members have apparently considered it their duty to impress upon the public from time to time their views as to the necessity for enlarged powers, and thus to promote a public sentiment in favor of such powers, and such efforts have not at all times been free from expressions avowedly inimical to the carriers. Under these conditions it would be little short of marvelous if the machinery of the Commission did not move slowly, if its docket were not clogged, and if there were not a feeling that the interests of the public were suffering undue delays.

Lastly and persistently comes the well-worn cry of rebates, secret contracts, and unjust discriminations in the interests of the favored few. The chairman of the Interstate Commerce Commission in 1903 stated before a committee of the Senate that rebates had practically ceased to exist. Rebates and all secret devices for discrimination were as definitely condemned by the act of 1887 as it is possible to condemn them. Severe penalties of fine and imprisonment were imposed, but not a single imprisonment has ever occurred, and you can count the fines upon the fingers of one hand. The Elkins law of 1903 strengthened the hands of the Commission against such practices to an extent that the Commission itself has stated that in respect to this phase of regulation the law was all that could be asked.

Yet in the two years since its passage the Commission has not once taken advantage of the great powers under that law.

The Commission in its creation was an anomalous tribunal. It has the power to investigate and to prosecute, and yet is not an attorney. It has the power, which, under common as well as statute law, is judicial, to condemn a rate or a practice adjudged to be unreasonable or unjust, and yet is not a court. It went beyond its powers and claimed, because it was authorized and required to condemn unjust and unreasonable rates, that inferentially it had the power, which is legislative, to name a future rate in substitution, and yet it belongs not to the legislative branch of the Government.

It has sought to have its finding made self-executing, and has even claimed that it exercised such powers for ten years, and yet it is not included in the Executive Department.

Small wonder under these conditions that it has not accomplished all the good for which the public hoped.

Because the carriers have not accepted all its edicts, but have on occasion availed themselves of their inherent rights to appeal to the courts for protection, they have been charged with an arrogant resistance to authority, and yet the records show that in over 90 per cent of such appeals the findings of the Commission have been reversed.

In many respects the act itself was inadequate for its intended purposes.

It was intended to do away with all rebates and unjust discriminations and to secure rates uniform to all similarly circumstanced, and yet water lines, in many cases participants in the identical traffic for which the rail carriers compete, are exempt from its provisions.

A large volume of the interstate traffic in respect to which rebates had flourished was and is handled by lines partly within the United States and partly within the boundaries of foreign countries, and yet no provision was made which would protect the rail carriers within the States against the unfair, the illegal, and the demoralizing practices of the foreign component parts of such lines.

It has been adjudged that the express companies doing an interstate traffic, competitive to an extent with the railways, and moved over their lines, are exempt from the provisions of the law.

Fast-freight lines and private-car lines are doing on their own account, or through their agencies, an interstate traffic in many cases highly competitive with the carriers which are subject to the act, and yet no steps have been taken to hold such lines amenable to those restrictions which are imposed upon such carriers.

Thus, while rebates and unjust discriminations were condemned, gaping loopholes were left in the legal fabric for the continuance of such practices. Under these conditions it could scarcely be expected that the operations of the law would be completely satisfactory.

The English Government's method of railway regulation, and its supervision over railway rates and charges, have often been referred to as furnishing a precedent for the enlargement of the powers of the Interstate Commerce Commission.

A parallel between the powers and duties of the railway and canal commission of England and the Interstate Commerce Commission of the United States will serve admirably to illustrate the wide divergence in principle upon which railway regulation is provided for in the two countries. The railway and canal commission consists of five members, two appointed upon the recommendation of the president of the board of trade, one of whom must be experienced in railway business, and both hold office for life or during good behavior, and three ex-officio members, who must be judges of the superior court. The commission is a duly constituted court of record, and not less than three commissioners shall attend at the hearing of any case, one of the ex-officio or judicial members presiding.

The commission thus constituted, and as a court of record, is peculiarly fitted to deal conservatively and impartially with the issues presented to it. It has no duties liable to impair its judicial character.

It can not orginate complaints, or proceed upon its own motion; it is not charged with the duty of inquiring into the management of railways, and it has no administrative supervision over any of the details of railway operation. It is not charged with the duty of detecting violations of law or of bringing about prosecutions for such violations. Contrast this with the short tenure of office and the varied functions of the Interstate Commerce Commission, its inquisitorial powers for detecting violations of law, its power to institute complaints in its own name, and to cause prosecutions to be instituted in the courts, and its authority and duty to enforce certain provisions of the law, and the fundamental distinction between the English method and the present American method becomes glaringly apparent.

Notwithstanding the superior judicial position occupied by the railway and canal commission of England, an appeal lies from its decisions on all questions of law.

With all its judicial powers, and all the safeguards of long training and life tenure, the English commission has no power to revise the rate schedules and classifications of the English carriers. Its functions are confined to the adjustment of complaints within the limits of rates and classifications prescribed by Parliament.

The simple, direct, equitable, and effective method of dealing with the grave questions now at issue seems to be this:

If further legisation be necessary—and I do not say that it is not—let it be given the direction pointed out by the evils calling for correction, and along logical, not experimental, lines for the remedying of those evils.

Draw the distinction broadly and unmistakably between punishment for crime or misdemeanor on the one hand, and the unnecessary and unwise governmental or paternal interference with legitimate and legal exercise of individual endeavor on the other.

Separate widely the functions of government which detect and arraign and prosecute from those which sit in judgment upon complaints and offenses against the law.

Strengthen the laws in condemnation of rebates, secret devices, and unjust discriminations to any extent that may be found possible, and provide, if such further provision still be necessary, for the prompt arraignment and prosecution of all offenders of the law in the duly constituted courts of the country, and for the unsparing punishment of those who are found to be guilty. If there are such offenders in the railway fraternity their offenses should be exposed and punished, but it is un-American and unfair, not to say outrageous, because it is alleged there are such, that every manager and every president and director shall be subject to indiscriminate public condemnation, and that the innocent investors shall have their property jeopardized and their rights infringed because those to whom the prosecution of the law is intrusted fail to find the offender and to punish him.

Bring under the provisions of the interstate-commerce act and the jurisdiction of the Commission those water lines which are engaged in interstate commerce in competition or in conjunction with the railways; place such restrictions upon the interstate traffic passing partly through foreign countries as will compel compliance with all the laws and regulations which apply to that moving solely within United States boundaries; spread the mantle of the law and of *the Commission* over the fast-freight and private-car lines doing interstate

commerce, and institute, if needs be, such regulations in respect to industrial tracks and phantom railways as shall prevent such allowances to them as may breed insidious evasions of the law.

In a word, stop illegal abuses drastically, but avoid action which will affect savings put into railroads in good faith; avoid legislation which might impair service and efficiency and reduce the wages of 1,300,000 employees, for to the wage-earners alone among that number now go over half of the gross expenses of the American railways.

The CHAIRMAN. I desire now to submit a statement of Mr. Willcox, president of the Delaware and Hudson Company:

STATEMENT OF MR. DAVID WILLCOX.

Mr. Chairman and gentlemen, having been honored with an invitation by this distinguished committee to express my views, I deem it both a pleasure and a duty to demonstrate to the best of my ability that political rate fixing and business by lawsuit are not required by existing conditions; that such procedure as that contemplated by the Townsend bill would be largely ineffectual for any purpose, and that so far as it was effectual it would be wholly disastrous.

WIDE DIFFUSION OF INTEREST IN RAILWAY PROPERTY.

As I am the president of The Delaware and Hudson Company, it seems proper that I should begin by stating some facts with reference to that company. It was incorporated by the State of New York in 1823, for the special purpose of mining anthracite coal and bringing the same from Pennsylvania to New York, and its powers were confirmed by the legislature of Pennsylvania very shortly thereafter. Its charter as a coal-mining company, therefore, arises from the legislation of both States and antedates the statutes following the Dartmouth College Case; its powers as a company engaged in transportation, first by canal and subsequently by rail—operating 843 miles of railroad—are incidental to its character as a mining company. It produces over 5,000,000 tons of coal annually from its own lands, part of which are shipped over its own lines and part over the lines of other companies. It is, therefore, largely interested in the question of rates, both as a shipper and as a carrier.

Since its incorporation The Delaware and Hudson Company has paid out in wages probably over $600,000,000, and in dividends between $60,000,000 and $70,000,000. It has now about 23,000 employees, and with its subsidiary companies about 6,000 security holders. Therefore there are at least 29,000 persons whose income, in whole or in part, arises directly from its operations. With those who are dependent upon them, it is not too much to say that there are about 125,000 persons who are directly and vitally interested in the continued prosperity of the property. This does not, of course, include the residents of the localities along the line and those who are there engaged in business, nor the large number of persons who are occupied in producing and selling to the company a great variety of railway and mining material.

Notwithstanding a random guess to the contrary contained in the report of the Industrial Commission, The Delaware and Hudson Company is not identified with any so-called "group" of railroads or capitalists, and is absolutely independent in its management. Its stock is very widely distributed. There are over 3,800 stockholders, and their average holding is about $11,000 at par. The average amount

annually paid by the company to each of its stockholders does not exceed the average amount which it pays to each of the miners of its coal. By reason of its long-established character the securities of the company and its leased lines have come to be regarded as conservative investments. A great part of them are held by savings banks, insurance companies and similar institutions, and by individuals acting in a fiduciary capacity, so that the number of persons interested in its securities is in reality very much larger than that which has just been stated.

This is a fair illustration of the situation of the railroad properties of the country. An incomplete investigation has been recently made regarding the railroad securities held by the insurance companies, by the savings banks, and by the educational institutions. The following statement shows the value of the railroad securities shown to be thus held so far as this investigation has yet gone:

By the insurance companies	$845,889,038
By the savings banks	571,031,277
By the educational institutions	47,468,327
Total	1,464,388,642

These holdings represent savings-bank depositors to the number of 6,273,754; life insurance policy holders to the number of 18,147,382, or 24,421,136 in all of the two classes, and a great number of instructors and students at educational institutions. The holdings of the insurance companies and the savings banks are about 30 per cent of their entire assets; in the case of the educational institutions they are about 33⅓ per cent of their assets. The holdings disclosed by this investigation are about one-sixth in value of all the railway securities of the country, as that value is estimated by the Interstate Commerce Commission. Yet this investigation, as has just been said, has necessarily been very incomplete, and has covered merely a small part of the country. These facts illustrate the wide diffusion of interest in railroad securities.

But the extent of the interest of the railway employees is even more striking. In 1903, they numbered 1,312,537; their earnings were $775,321,416, an average of $582.76 each, and the total number of persons dependent upon their earnings was probably not less than 6,500,000.

THE WELFARE OF THOSE INTERESTED DEPENDS ON THE EARNING POWER OF THE PROPERTIES.

What, now, has been the cause of the prosperity of these properties, and upon what depends the welfare of these vast numbers of persons? Upon nothing whatever but the ability of the properties to produce adequate returns. Without the income, the property is of no value. Anything which injuriously affects the earning power of course proportionally destroys the property itself. Mr. Commissioner Prouty, whose views are important because of his leading position in the Interstate Commerce Commission and the diligence with which he has pursued the campaign for rate-fixing power, in an address before the Illinois Manufacturers' Association, at Chicago in 1902, said:

> The railway rate is property; when you meddle with that rate you deal with private property; a slight change in that rate is of great consequence to the railway and of equal consequence to the public.

He has expressed the same view before this committee. Yet when he came to address the New England Lumber Dealers' Associations, on January 25, 1905, the learned commissioner said:

> Transportation, which the railroad offers to the public, is public property.

In short, his curious position seems to be that the service is public property which may be disposed of as the public decides, but the compensation therefor is private property which is entitled to all the safeguards of such property in general. In the view first expressed that the earning power of the property, which he described as private property, is in fact the property itself, Mr. Prouty agreed with the United States Supreme Court, which has stated the same fact as follows:

> The value of property results from the use to which it is put, and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use. (154 U. S., 445.)

As Alexander Hamilton sententiously said:

> What in fact is property but a fiction, without the beneficial use of it?

Anything, therefore, which tends to remove from the scope of natural laws and place in the hands of public officials the question what these great properties shall earn—anything, which tends artificially to qualify or limit their earning capacity, affects not merely the welfare but the very livelihood of millions of our fellow citizens. It is idle to speak of political rate fixing as concerning merely the railway corporations. They are artificial persons—convenient means by which the property of the owners is held together for administration and is made productive. Whether that precise method is to endure or is to pass away, is not the vital question.

The point is, what effect will the action now urged have upon the people who are interested in the many ways which have been suggested? What is to become of these great masses of the accumulated savings of our active and prudent citizens? Such savings constitute the fundamental material strength of the American people. These investments have been made upon the faith of existing safeguards of property, both statutory and constitutional. If their income should be destroyed, the great mass of the resources of the country would be destroyed and all its citizens would be the sufferers. For those interested are not merely the persons above named, but also the owners of real estate, the merchants, the farmers, the wage-earners, and all to whom it is of concern that there shall be no injury to those resources upon which their tenants, customers, and employers depend. As Mr. Prouty well said in an article in the Forum for April, 1899:

> Next to agriculture, the railway industry is the most important one in the United States to-day; there can be no national prosperity unless this industry be reasonably prosperous.

What then, will be the probable effect of transferring its control to the domain of politics upon the future welfare, productiveness, and value of the greatest single industrial interest of the country and upon the millions of people whose accumulated savings are invested therein and who are dependent upon that interest for their happiness and livelihood? That is the real question now pending, and it is, indeed, a most serious question.

NO REASONS HAVE BEEN SUGGESTED FOR SEIZURE OF CONTROL OF THIS PROPERTY BY POLITICAL AGENCIES.

It has been said without contradiction that a reduction in the earnings of the railroads amounting to 1 mill per ton per mile would extinguish all possibility of dividends, and a reduction of one more mill would extinguish all possibility of interest. There can be no question that action in this direction would lead to a drastic effort on the part of those in positions of responsibility to reduce expenses of operation. This would naturally entail reduction of wages, curtailment of efficiency of service, and cessation of improvements in advance of actual business. Is the country prepared to face such chances of disturbance; and if so, what overwhelming reasons justify the experiment?

Taking The Delaware and Hudson Company again for a moment as an illustration, it has been in the conservative administration of its property for eighty-two years. Such administration has secured an adequate income; by the use thereof the comfort and prosperity of hundreds of thousands of our citizens have been secured, and its direct constituents now number probably 125,000. All this has been accomplished without serious complaint. Its rates have been constantly tending downward, and during the past two years have been reduced approximately 10 per cent. During 1904 they were 6.75 mills per ton per mile; in March, 1905, its rates on high-class freight averaged 7.7 mills per ton per mile—as low as any in the country. It has not a single controversy pending upon the subject of rates. Such facts illustrate the baselessness of the assertion of Messrs. Prouty and Bacon that rates generally, or, as Mr. Bacon says, "on every conceivable commodity" (Statement, p. 20), have been raised extravagantly and that the public is clamoring for their reduction.

But now this great constituency—which, however, is merely an infinitesimal fraction of those who are interested in the general subject—is confronted by the imperious demand that it surrender control of the income of its property and of its means of future existence to the precarious mercies of a political board which is dominated by the distinguished Commissioners whose campaign about the country for years past has demonstrated the somewhat acrimonious spirit which they would bring to the duty of impartial judgment. I do not exaggerate the matter, because the action sought by the Townsend bill would, as the Supreme Court has already said (167 U. S., 570), place in the hands of the Commission control over all the interstate railway rates of the country, and, therefore, control over the value of all the railway property. It is true that Mr. Bacon has, upon the present hearings, expressed views differing greatly from the provisions of the Townsend bill. He now favors a power to fix merely maximum rates (p. 27), or, perhaps, not even that (p. 81), with power in the carrier to raise even those rates under changed conditions (p. 28), and proposes eleven amendments to the Townsend bill (p. 76), which he was so anxious to jam through last winter. So, too, with Mr. Prouty. But such views bind nobody and are "subject to change without notice." The Townsend bill seems, therefore, to embody the plan which is properly the subject of present discussion.

The substantive provisions of the existing law are that rates shall *be reasonable*, and that there shall be no undue discrimination or *unjust* or unreasonable preference. It is not suggested that these

provisions are insufficient and no addition to their terms is proposed. So, too, as to existing conditions, the Interstate Commerce Commission has the fullest power to proceed against any violation of those provisions and to compel cessation of such violation. No addition is proposed or suggested as necessary to the power of the Commission over such existing conditions.

What is sought is the power to control the commerce of the country by fixing absolute rates of transportation. The lawmaking power ordinarily prescribes rules of conduct for the citizen and leaves him free to carry on his affairs in accordance therewith. Here the plan is not merely to prescribe such rules of conduct, but to seize future control of the property which they affect. Let us see whether any considerations have been advanced which justify such an industrial convulsion. I shall endeavor to show that no such reasons exist, largely by using the language of the Supreme Court of the United States and of the Interstate Commerce Commission—two bodies which have seldom agreed, but which concur in supporting my contention.

REBATES ARE FULLY PROHIBITED BY EXISTING LAW.

That part of the President's last message which dealt with the subject of railway legislation was entitled "Rebates." It contained some strong expressions upon the subject of rebates and discriminations with which everyone agrees. The only suggestion that was made in that message upon the subject of legislation was, however, that the Interstate Commerce Commission should have the power to fix railway rates. There never was a more complete *non sequitur*. The suggestion had nothing whatever to do with rebates and the power to fix rates would have no effect in that regard.

The cry of "rebates" has been used with much resonance and iteration by Messrs. Prouty, Bacon, and others as a means of stimulating public feeling in favor of conferring the rate-fixing power upon the Commission. The emptiness of this is clear. The public discussion of the subject has progressed far enough to make it evident that the question of rebates is not now in issue. So far as the lawmaking power is concerned, that matter was finally and fully dealt with by the Elkins law of 1903, which provided for injunctions against such practices.

Accordingly, the Interstate Commerce Commission has stated, with great positiveness, that no further legislation upon that subject is necessary or desirable. The language of its Annual Report for 1903 was as follows (pp. 10, 11):

> No one familiar with railway conditions can expect that rate cutting and other secret devices will immediately and wholly disappear, but there is basis for a confident belief that such offenses are no longer characteristic of railway operations. That they have greatly diminished is beyond doubt, and their recurrence to the extent formerly known is altogether unlikely. Indeed, it is believed that never before in the railroad history of this country have tariff rates been so well or so generally observed as at the present time. * * * In its present form the law appears to be about all that can be provided against rate cutting in the way of prohibitive and punitive legislation; unless further experience discloses defects not now perceived, we do not anticipate the need of further amendments of the same character and designed to accomplish the same purpose.

Similar views have just been expressed by the Commission in its Annual Report *for 1904* (p. 6), and in a recent interview the chair-

man of the Commission is reported to have said that such offenses are now almost as rare as forgery or highway robbery. So, too, Mr. Commissioner Prouty said last June, in the North American Review, that—

> The effect of the Elkins bill and the injunction proceedings has been to secure the maintenance of rates. That condition will probably continue.

Again, on these hearings, Mr. Bacon has said (p. 4):

> Personally I think discrimination is a thing of the past.

Substantially all of the witnesses have concurred in this view.

It is true, indeed, that rebates from passenger fares still exist in the form of passes and free transportation, and that such rebates are solicited and used with great frequency by many persons of prominence, notwithstanding their prohibition by the interstate-commerce act. But, so far as concerns freight transportation, the Commission has suggested no amendments to the Elkins Act, and it may therefore be assumed that it has discovered no defect in its provisions against rebates. None of the bills pending in the recent Congress had any provisions bearing upon that subject, and if they had all been passed the position of that matter would not have been affected in the slightest degree. Mr. Bacon said, last winter, before this committee (p. 16):

> So far as concerns paying rebates, upon either the published rates or the rates corrected by the Commission, it [the Townsend bill] will have no effect whatever.

Concededly, therefore, no further statutes as to this matter are needed, or contemplated; it is fully covered by the existing statutes. If such practices continue, it can be due only to failure by the executive branch of the Government to enforce them. Why has it not done this, instead of agitating for further power, while in its official reports that department states that the present statutes as to rebates are sufficient?

PROPAGANDA FOR GRANT OF FURTHER POWER TO THE INTERSTATE COMMERCE COMMISSION.

The only question at issue is, therefore, whether there is anything in the present situation warranting the incessant and at times imperious demand of the Interstate Commerce Commission that the power of fixing rates, from which the income of the railroad property arises, shall be exercised by that board. The Commission already has full power to prevent unreasonable rates. The question is whether it shall be authorized to go further and dictate precisely what rates shall be charged—what the properties shall be allowed to earn in the future. It is one thing to prescribe that the price of a thing shall be reasonable; it is quite another thing to fix the absolute price at which it shall be sold.

The policy of the country thus far has been distinctly to the contrary of that now urged. Very shortly after its creation, the Commission decided (in 1887), that its power in respect to rates was to "determine whether those which the roads impose are for any reason in conflict with the statute" (1 I. C. R., 357), and this language was later cited by the Supreme Court of the United States (167 U. S., 570), as showing that the Commission at first did not deem itself to be possessed of rate-making power.

Subsequently, however, the Commission made various attempts to *regulate* future rates. It has been said that the Commission exer-

cised this power for ten years without substantial objection or suggestion that its course was unauthorized by law. (Annual Report of the Interstate Commerce Commission for 1897, p. 11.) In an article in the North American Review for November, 1898, Mr. Prouty stated that—

> During the first six (not ten) years of its existence in no answer, in no argument before the Commission was its authority to prescribe rates questioned.

This statement was ingenious, because the power "to fix the rates of transportation charged by common carriers" was expressly denied in the answer filed in April, 1891, less than four years after the Commission was created, by the defendant in the case of Interstate Commerce Commission *v.* Lehigh Valley Railway Company (Annual Report for 1891, p. 288), and when the case finally came to judgment (on May 11, 1896) this defense was sustained. (74 Fed. Rep., 784.) As that, however, was an answer filed in the circuit court and not "before the Commission," it did not prevent Mr. Prouty from making this statement with "technical" accuracy; although it does show that the question was raised at an early day. So, too, Mr. E. P. Bacon, last winter stated before this committee (p. 14) that the Commission exercised this power during the first ten years of its existence "to the entire satisfaction both of the railway interests and of the public during that period," and during the present hearing he has repeated this statement with much fertility of iteration. These statements are radically erroneous.

As early as 1889 and 1890, the circuit court held in substance that the Commission had no power to fix future rates (37 Fed. Rep., 567; 43 Fed. Rep., 37), and the latter case was affirmed by the Supreme Court in 1892 (145 U. S., 263). As has been said, in April, 1891, the power was expressly denied in the answer in the Lehigh Valley case, and that defense was thereafter sustained. The Commission, as later constituted, was not, however, satisfied with the rulings just stated and continued its efforts with the result that its authority was immediately challenged in the courts. The brief for the appellants in the case first below mentioned filed in the Supreme Court, at the October term, 1894, contained the express point (p. 157) that "the Commission has no power to prescribe maximum rates." This point was sustained by the Supreme Court upon March 30, 1896 (162 U. S., 184), the court saying:

> Whether Congress intended to confer upon the Interstate Commerce Commission the power to itself fix rates was mooted in the courts below and is discussed in the briefs of counsel; we do not find any provision of the act that expressly or by necessary implications confers such a power (p. 196).

Again, upon May 24, 1897 (167 U. S., 479), the Supreme Court held with great positiveness that the terms of the statute granted no such power expressly and that it could not be implied therefrom, saying:

> The vice of this latter argument is that it is building up indirectly and by implication a power which is not in terms granted.

There was, therefore, no period of time during which the existence of such power was conceded by the parties affected, and as soon as the question reached the courts the power assumed was held not to exist.[a]

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[a] It strongly illustrates the slight value of the report of the Industrial Commission to find it stating nevertheless that, "it was not until almost ten years after the institution of the Commission that its right in this respect was contested. The first shadow of doubt seems to have been expressed in the decision of the Supreme Court in the so-called Social Circle case, adjudged in 1896."

The action of Congress in the matter as construed by the courts was not acceptable to the Interstate Commerce Commission. In its Annual Report for 1897 (p. 19) the Commission expressed the view that "the purpose of the act was to provide a means by which the public could array itself against the carrier," and the act provides (sec. 21) that the annual report of the Commission "shall contain such recommendations as to additional legislation * * * as the Commission may deem necessary." Whatever may be thought of its efficiency in other directions, the Commission has incessantly sought to effectuate the act in these respects. Accordingly, when these authoritative decisions of the Supreme Court settled the intention of Congress regarding the extent of the powers of the Commission, a propaganda was at once set on foot for further legislation increasing the powers of the Commission generally. In his address before the New England Lumber Dealers' Associations, on January 25, 1905, Mr. Prouty deemed it necessary to say that the Commission "has no press bureau," and on the present hearing Mr. Bacon has thought it his function to come to the defense of the Commission with a similar and more circumstantial denial. These "technical denials" will be taken by those acquainted with the facts wholly in a Pickwickian sense. Some illustrations may, however, be given of the methods which have been used for the purpose of stimulating public feeling.

Thus the expression "transportation tax" has been habitually applied by the Commission to the charges of the carriers. Messrs. Prouty and Bacon, too (statement, p. 21), have used that bogey liberally. Yet this has no more accuracy than would such an expression as the "wheat tax," or the "beef tax," or the "corn tax," or the "clothing tax," or the "newspaper tax" have in describing what is currently paid for those articles of general use. The individual consumer has no more to do with fixing the prices of such articles than with fixing the charges of the carriers who bring them to market. No one arrives at the price of a barrel of flour or a newspaper by bargaining; he pays the current price. The prices of the necessaries of life, too, are far more of a universal burden than are transportation charges. As the Commission said in its Annual Report for 1900 (p. 9):

> Generally a slight increase in the rate does not materially affect the price to the consumer.

And in its Annal Report for 1903 (p. 32):

> Perhaps in most instances the freight rate is so small a part of the total cost of a commodity that the consumer is unconscious of the increase in rate.

This shows the hollowness of Mr. Cummins's present contention that the public generally is suffering from unreasonable rates. On the other hand, however, an increase in the price of articles in general use, such as those above mentioned, falls directly upon the consumer and is felt at once.

But while the burden of the transportation charge is so much the lighter, the general body of the consumers creates the conditions which settle the amount of that charge quite as much as the price of the goods transported. The transportation service is similar to any other service, and its price can not be successfully controlled by statute, but must depend upon those natural laws which the advocates of *drastic* legislation have so often made the objects of their sarcasm, and

to which they so greatly prefer legislative wisdom as expressed in statutes. The most potent cause of the downward course of rates in the past has been, not the statutes nor the Commission, but the pressing commercial necessities of shippers and consumers and the efforts of traffic officials to meet them.

So, too, the Commission (Annual Report for 1903, pp. 13–15), and one or more of its members individually, have asserted that rates as a whole have greatly increased of late. For example, in an article recently published in the North American Review, Mr. Prouty said:

> Within the last five years rates upon every commodity in every section have been advanced. * * * We are confronted with increasing monopoly, with advancing freight rates, and with no probable relief in sight.

At that time the last figures available were those for 1903, so that the comparison extended back to 1898. Yet in 1898 the average freight rate per ton per mile was 0.753 cent, or 7.53 mills, and in 1903 it was 0.763 cent, or 7.63 mills. The increase upon which were founded these lugubrious views amounted, therefore, in a time of generally rising prices, to ten thousandths of a cent per ton per mile—10 cents per ton for a thousand miles—or 1.3 per cent.

In the depression of 1899 rates reached the lowest point ever known, namely, 0.724 cent per ton per mile. In 1903 the mileage rate was 0.763 cent. The increase, therefore, was merely 0.039 cent, thirty-nine thousandths of a cent—39 cents per ton for a thousand miles—or about 5 per cent. As will shortly be seen, this was far less than the general increase in prices, and in no sense unreasonable. How useless and misleading, then, was the statement of the Industrial Commission founded upon intricate theorizing, which has been assiduously used by Mr. Bacon in securing support for the present agitation and has been repeated by him on these hearings (p. 20), that—

> The advance in published freight rates in 1900 upon all the railroads of the country is probably not less than 25 per cent.

After that startling flight of assertion has been used for years to prejudice public sentiment, its author, Mr. Ripley, now comes forward with the admission that the advances made have been reasonable and justified by experience (statement, pp. 85, 2, 5, 25, 31, 36). In any case the conclusive answer is that the earnings after the advances in question showed an increase of not 25 per cent, but about 5 per cent. Of a similar character is Mr. Bacon's present assertion that during the period in question rates were raised on "every conceivable commodity" (statement, p. 20), although he concedes that rates in general are not unreasonable. "We do not claim," he says, "that rates are generally excessive. They are not. They are generally regarded as reasonable" (p. 76). If the increases asserted were reasonable, why should they be used to the prejudice of the carriers?

Again, in response to an inquiry from the Senate, the Commission reported on April 7, 1904, that this rise in mileage earnings from 1899 to 1903 had added to gross earnings to the amount of $155,475,502, but that it was unable to state the amount added to net earnings. This was startlingly erroneous; the increase in mileage rate was 0.039 cent, and the total tonnage of 1903 was 173,221,278,299. Multiplying the two together the increase in gross earnings was, therefore, at the most, $67,556,299 instead of $155,475,502. But the Commis-

sion has never corrected this prodigious miscalculation and apparently still adheres to it. Moreover, the figures then in possession of the Commission showed that, comparing 1903 with 1899, gross earnings increased 43.7 per cent, while operating expenses increased 46.7 per cent; gross earnings per mile increased 31.1 per cent, while operating expenses per mile increased 34 per cent; the ratio of expenses to earnings increased from 65.24 per cent to 66.16 per cent; the number of employees increased from 926,924 to 1,312,537, namely, 385,613, or 41.3 per cent, and their compensation from $522,967,896 to $775,321,416, namely, $252,353,520, or 48.2 per cent; the average compensation for each individual employee increased from $551.89 to $582.76, making the total increase by reason of this increased rate of compensation $50,373,501; the total cost of fuel increased 40 per cent, or a total of $41,000,000. Still further, the figures for 1904 show that the operating ratio was 67.75 per cent, or 2. 57 per cent of the entire gross earnings above the operating ratio of 1899. These figures prove that the slight increase in the mileage earnings has been absorbed by the increase in expenses of operation, and has been wholly inadequate to meet that increase in expenses.

Obviously the propaganda to take the railroad property of the country out of the hands of its owners and settle its income by political order should rest upon something better than this in order to warrant the demand for such power by those who would be charged with its exercise.

THE EXISTING RATES ARE REASONABLE.

No such action can be supported by the character of the existing rates, for it can not be and is not seriously questioned that the existing rates are reasonable in themselves. Notwithstanding the elaborate efforts which are made to discredit it, the mileage basis is generally accepted as the only practicable standard for measuring general conditions and comparing them with those in the past. The Commission has said, "the rate per ton per mile brings rates down to the narrowest point of scrutiny, and, for that purpose, is valuable," although not absolutely controlling in exceptional cases (Annual Report for 1899, p. 37). Within the past twenty years earnings have fallen from 1.240 cents to 0.763 cent per ton per mile, or about 40 per cent. As already said, the latter figure, which prevailed in 1903, was only 0.039 cent above the lowest point ever reached, which was in 1899. The increase in mileage earnings was due in reality not to increase in rates but in high-class freight, which rose from 23.19 per cent of the whole in 1899 to 24.58 per cent in 1903.[a]

This increase in mileage earnings from 1899 to 1903 was approximately 5 per cent, but in the meantime wages, cost of materials, and cost of operation had advanced very much more. Indeed the recent report of the Department of Labor on the subject of prices (No. 51) shows that, taking 100 as the average of prices for the period from 1890 to 1899, the price of all commodities in 1902 stood at 112.9, or 12.9 per cent above the average of the preceding decade. Applying

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[a] Notwithstanding this Mr. Bacon still adheres to the exploded claim that low-grade freight has increased more rapidly than high-grade freight, and Mr. Ripley joins in this suggestion (p. 5). That is to say, that in a country of constant industrial development raw materials have increased out of proportion to manufactured products!

the same treatment to railway rates, they stood in 1902 at 90.2, or 9.8 per cent below the average of the preceding decade. Still further, the cost of operation in 1904 was 2.27 per cent upon the entire gross earnings greater than it was in 1899. This, of course, shows conclusively that freight earnings had not kept pace with increase in expenses.

It has been abundantly shown on these hearings that the freight rates in this country are lower than those prevailing anywhere else. This has been so fully established that the advocates of drastic legislation have given up this branch of the controversy and are now busily occupied in claiming that there are no common grounds of comparison. It is interesting to notice, too, that in England nearly 40 per cent of the gross receipts goes to capital and only 28 per cent to labor; while in this country 42 per cent goes to labor and less than 25 per cent to capital. In Australia, upon the government roads, rates are almost double those in the United States and yet the roads do not pay.

Very few substantial controversies have ever arisen regarding the reasonableness of rates, and the Commission has frequently stated, in substance, that there is no ground therefor.

In its Annual Report for 1893 the Commission said that to-day extortionate charges are seldom the subject of complaint (p. 12). * * * We are not troubled with the question (under consideration in England) that rates * * * are too high (id., p. 17). It is significant that * * * there has been, under the operation of the interstate-commerce law, a steady decrease of complaints based on charges unreasonable in themselves. The concession is quite general among shippers that, with some exceptions, rates, as a whole, are low enough, and they often express surprise that the service can be rendered at prices charged (id., pp. 218, 219). Traffic for very many competing localities is being carried at rates which do not yield a due proportion of the necessary net revenue which carriers must have (id., p. 221). Rates to competing and distributing centers are not for the most part unreasonably high; they are frequently quite low (Annual Report for 1897, p. 14). * * * Many rates in this country are undoubtedly too low (id., p. 2).

These facts are of general application, because nearly every city in the country of any "considerable size is both a commercial and a railroad center, therefore a competitive point in both respects" (Annual Report for 1896, p. 39). "It is true, as often asserted, that comparatively few of our railway rates are unreasonable in and of themselves—that is, without any reference to other charges made by the same carrier or to those of other carriers," but they may operate to create a preference between localities. "The cases are exceedingly rare in which unreasonableness has been found merely from the amount of the rate itself as laid upon the particular traffic and the distance it was carried." (Annual Report for 1898, p. 27.)

On March 18, 1898, the chairman of the Commission testified before the Senate Committee on Interstate Commerce that the question of "excessive railroad charges—that it to say, railroad charges which in and of themselves are extortionate—is pretty much an obsolete question." At that time the rate per ton per mile was within 0.01 cent of that in 1903. Since these numerous statements were made, the rates have been and now are much lower. Even Mr. Prouty has said before this committee (p. 50), "in my judgment the railroad rates of this country are lower than they would have been had they been made by any interstate commerce commission in the world."

Accordingly, cases in which rates have been shown to be unreason-

able in themselves are practically unknown. From 1887 until October, 1904, the Commission found 26 cases of rates unreasonable in themselves, or about 1½ annually. Further than this, not one of these decisions was sustained by the courts and there has not been a single case of a rate unreasonable in itself established in the courts since the Interstate Commerce act was passed.[a] The record, therefore, proves clearly that the remedies provided by the act have shown no insufficiency. Substantially no one having accurate knowledge of the facts, questions that the rates are reasonable, and even Mr. Prouty has publicly stated that in 1899 they were too low. I have shown that since then the advance has been about 5 per cent, while prices generally have risen much more. So, too, on these hearings Mr. Bacon has said repeatedly that the present rates are in general reasonable. His principal complaint is that the rates on wheat are *too low* (pp. 58, 59). "We do not claim," he says, "that rates are generally excessive. They are not. They are generally regarded as reasonable" (p. 76).

The burden of the Commission's contention is that there should be "some tribunal before which the reasonableness of rates can be tried;" Mr. Bacon (pp. 79, 80) and Mr. Cummins have said the same thing on these hearings. Yet this is utterly empty. For under the present law the Commission has full power to enforce the provision that rates shall be reasonable. It has suggested no facts establishing the necessity of any further power in order to secure such reasonableness of rates. Even as to the advances claimed to have been made since 1899, amounting to about 5 per cent, the Commission does not contend that any action taken has been unwarranted or excessive. In its Annual Report for 1899 the Commission said, "it is not intended to intimate that these advanced rates are unlawful," but "the injustice which may result must be without available redress" (p. 8). In its Report for 1903 the Commission said:

> It would be both unwise and unjust upon the part of the public to prevent them, if they are reasonable under all the circumstances (p.15). * * * If they are just and reasonable, they ought not to be prevented (p.17).

The claim is, therefore, not that any injustice has been done in respect to reasonableness of these rates—there is no one asserting that he has been damaged and the Commission does not assert the existence of any such injustice. It has full authority under the present statute to compel the carriers to cease charging these rates if they are unreasonable, but it has never taken effective action in the matter; so far as it has gone the Commission has in general sustained such advances as have been made (9 I. C. R., 382). The claim is merely and baldly that future rates generally should be controlled absolutely by the Government—that they should be fixed by political rather than commercial methods. (Annual Report for 1898, pp. 20, 24; Annual Report for 1900, p. 21.)

Inasmuch as no case of unreasonable rates has ever been established in the courts and the Commission suggests no facts indicating the existence of such rates, the Commission's opinion that it should have general power over the commerce of the country can not be deemed to warrant wresting control of the railway property from those who are dependent thereon.

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[a] These figures differ somewhat from those of the recent report of the Commission to this committee, but it will be shown hereafter that they are correct.

DISCRIMINATIONS OR PREFERENCES BETWEEN LOCALITIES OR CLASSES OF TRAFFIC ARE PROHIBITED, AS FAR AS PRACTICABLE, BY THE PRESENT STATUTES.

The existing remedies are ample to enforce the prohibition of discriminations or preferences between individuals, localities, or classes of traffic. As already pointed out, the matter of discrimination or preference between individuals has been fully covered by the original act, as supplemented by the Elkins law. The only remaining matter coming within the prohibition of the act is that of alleged undue discriminations or unjust or unreasonable preferences between localities or kinds of traffic.

In the words of the Supreme Court:

> It is not all discriminations or preferences that fall within the inhibition of the statute; only such as are unjust and unreasonable. (145 U. S., 284.)
>
> Commerce, in its largest sense, must be deemed to be one of the most important subjects of legislation, and an intention to promote and facilitate it, and not to hamper or destroy it, is naturally to be attributed to Congress; the very terms of the statute that charges must be reasonable, that discrimination must not be unjust, and that preference or advantage to any particular person, firm, or corporation or locality must not be undue or unreasonable, necessarily imply that strict uniformity is not to be enforced; but that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies and of the producers, shippers, and consumers should be considered by a tribunal appointed to carry into effect and enforce the provisions of the act. (162 U. S., 218.)
>
> The mere circumstance that there is, in a given case, a preference or an advantage, does not of itself show that such preference or advantage is undue or unreasonable within the meaning of the act. (162 U. S., 220.)

Claims that preferences exist and that they are unjust or unreasonable arise from the natural desire to secure equal advantages with others.

> The rate is of very little consequence to the merchant, provided it is the same to his competitors as to himself. (Annual Report for 1897, p. 18.)
>
> It makes no difference to a shipper what the absolute rate is, whether it is high or low, if nobody else has a lower rate with which he comes into competition or which would debar him to a certain extent from securing his share of the business. (Statement of Mr. Bacon, p. 14.)

As already stated, the efforts of traffic officials to meet the views of shippers and consumers in this regard have had more to do than any other cause with the reduction of rates and their proper adjustment as between different localities. That is what has reduced the rates—the spreading out of the business of the country so that its various producing regions may each reach as many markets as possible.

But if the Commission is to divide the country into zones, so as to settle "the just relation of rates" and "the rightful benefits of location," business will be very precarious for those who ship to considerable distances. The Constitution provides that—

> No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another. (Art. I, sec. 9, subd. 5.)

It is true that the Commission and the Attorney-General are somewhat inclined to belittle this provision of the Constitution, but the Supreme Court has said that this means absolute geographical uniformity of regulation "so that all regulations of commerce or revenue affecting commerce through the ports of the states should be the same in all ports." (Knowlton *v.* Moore, 178 U. S., 104.) This rule was established for the purpose of securing uniformity throughout the

country in all regulations by the Federal Government of commerce through the several ports. It can not be evaded. The Commission, therefore, could not make rates and differentials for the purpose of enabling one section of the country to compete with another in its foreign commerce, while the railroads themselves facilitate such competition in every fair way. There could be no blow to commercial competition equal to the consequences of political rate fixing. As Mr. Prouty says (p. 48), "you could not have competition without differentials." Of necessity such rate fixing would destroy at each port the competition of the more distant producers, so far as concerns foreign commerce.

> In view of their opportunities and the temptations to which their traffic officers are exposed, it is perhaps not too much to say that the obligations of neutrality in this regard (between localities) are usually observed, and that discriminations of this character are not often the subject of complaint. (Annual Report for 1895, p. 17.)
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> It is worth observing that some, at least, of the most important controversies involving the rates and methods of railway carriers, are rather between competing communities or producing regions than between rival lines of railway. Railway development has extended far beyond the point at which any of the greater systems finds its interests so identified with a single community as to feel wholly indifferent to the demands and needs of all competing communities. Indeed, there may be entire sincerity in the contention, on the part of the officers of a great system, that any adjustment which satisfies the rival communities which it serves can not be seriously objectionable from its own point of view. In such degree as this contention may be sincerely advanced, the carrier becomes a relatively unimportant factor in the struggles of rival localities. (Annual Report for 1904, pp. 28, 29.)

The efforts of the traffic officials to advance the interests of the localities which they serve will naturally continue. But, if these struggles between localities are permitted to constantly pare down the carrier's revenue—and that has been their effect—they are a factor of great danger to the success of the carrier's business. It is obvious that they will continue to have that effect if they are to be turned over for adjustment to a political board without interest or responsibility save to appease excited litigants.

This demand for absolute equality among localities can never be entirely satisfied. If under any conceivable form of statute the Commission could accomplish this, that result would not be desirable, as it would tend to destroy the active spirit of enterprise which is necessary to commercial progress. As long ago as 1893, the facts in regard to this matter were very clearly expressed in an address by one of the Commissioners embodied in the annual report of the Commission:

> It is idle to look forward to an adjustment of rates which, as applied to localities and differently circumstanced persons, will bear no heavier upon one than upon another. Such mathematical equality is manifestly unattainable through human endeavor. Not even common control of all railways through consolidated ownership or Government purchase could accomplish such a task of equalization for thousands of places and millions of persons. Certainly the much vaunted theory of uniform charges for all traffic would, under the greatly diversified conditions which now prevail throughout the country, have the opposite effect and inflict greater discriminations than arise under the existing general practice of fixing charges which attract traffic to the various lines. Uniform rate per mile on all traffic for any distance would arbitrarily limit commerce to sections and greatly restrict production. (Annual Report for 1893, p. 218.)
>
> Trade is no longer limited to circumscribed areas; distance hardly ever bars the making of commercial bargains between widely separated parties, and almost every article of commerce finds the competing product of another region in any place of sale. The consequence is that the products of the farm, the forest, the mill, and the mine are continually demanding from carriers rates

adjusted to values in particular markets. It is this competition of product with like product, of market with market, that has induced carriers, in their eagerness to increase the volume of their traffic, to continually reduce their rates to market points. Such competition is the competition of commerce itself; the strife between competing industries which the public interest demands should be left free from fettering laws and uncontrolled by restraining combinations. (Id., p. 219.)

Compare for a moment these words of statesmanlike wisdom with the view of the distinguished economist who thinks that transportation to distant points should be discouraged because it involves "an economic waste." (Statement of Mr. Ripley, pp. 2, 13, 15, 16, 17, 20, 33.) The animating principle of the traffic official is to adjust rates so as to enable as many people as possible to do business—to secure the greatest good to the greatest number—but the "economic" suggestion is that "there is too much elasticity of rates" (p. 46); apparently business in the several localities should be limited to those who can carry it on with least expense to themselves, while the remainder should be commercially extinguished. Useless transportation should be avoided, and commerce rather should be laid "waste" to satisfy the rules of economics!

Such competition can never be controlled or equalized by statute—as Mr. Ripley says (p. 40):

A great many of these complaints will never be settled, because the conditions are against the places.

This is proved by the fact that in States where railroad commissions have power over future rates, questions of alleged discrimination between localities and classes of traffic are as frequent and acute as ever. By reason of their inability to fix rates, the State commissions have fallen back upon mere distance tariffs. It is easy to see what would be the effect of that policy upon the country generally. In the words of Mr. Bacon (statement, pp. 46, 47), the claim would be that "every locality that has natural advantages is entitled to the benefit of those advantages." Each producing section would, therefore, be shut up within its own little market, and as soon as it reached the point where the distance tariff applied in favor of the producer at another point, it could go no further because the rates would draw a dead line, beyond which commerce could not pass. Both eastern and western markets would be insufficient, and their farmers, manufacturers, and merchants would be shut out from the more distant markets in which their produce and their goods are now exchanged for each other.

Like all commercial questions, these rivalries can be settled only by natural laws. The foregoing expressions show that the carriers in general use their best efforts in the premises. The record proves, too, that the present remedies have not been insufficient. It will shortly be shown in detail that since the interstate-commerce act was passed, contested cases of all sorts have been comparatively few in number, and that, with one and one-half exceptions, the Commission has been overruled in all of its decisions as to discriminations or preferences of any sort which have been passed upon by the courts. This, of course, proves that there has been no serious injustice as between localities because practically none of such cases had sufficient merit to stand the test of judicial investigation by the ordinary processes. In addition to this, the Supreme Court has held that such discriminations may be prevented by use of the remedies provided by the Elkins law (189

U. S., 274). These considerations conclusively demonstrate that no new legislation is needed for the purpose of securing relative justice.

Under the present statutes the Interstate Commerce Commission has full authority to prevent unreasonable rates, unjust discrimination, or undue or unreasonable preference. It is not proposed to add anything further to the prohibitions of the statute in that regard. Why are not these provisions enforced? No reason is shown why the Government should seize control of the property instead of using the ordinary methods for enforcement of the law.

THE COMMISSION HAS NO SETTLED PRINCIPLES AS TO FUTURE RATE MAKING.

The Government is not an abstraction. It consists practically in the persons who hold the offices. As regards the present question, it is the Interstate Commerce Commission composed of five lawyers. The retiring member was a farmer who had previously had some railroad experience as an operating officer. But he has now given place to another eminent lawyer, without experience in railroad matters. The proposition which the Commission has been urging for years is to confer upon it practically complete power over future rates, and, therefore, over the commerce of the country. Was there ever a more vaulting ambition! And yet as long ago as 1893, another learned Interstate Commerce Commissioner from Vermont said:

> The burdens imposed upon the Commission under the law are quite sufficient to satisfy the most grasping ambition. (Annual Report for 1893, p. 225.)

Mr. Prouty has often intimated that five or six private individuals can get together and fix rates for 115,000 miles of railroad. They have never been named, so far as I am aware; it is not suggested that they have ever done anything of the sort; anyone familiar with the subject knows how impossible such a thing would be, and this the learned Commissioner has publicly admitted. As will be seen in a moment, the Interstate Commerce Commission states that each rate is a complex problem possibly affecting innumerable persons and localities. But the present suggestion is to make it the duty of five officials, substantially controlled by one of their number, to settle at Washington all the rates of the country—and there are probably 10,000,000 rates. Well did Judge Cooley call this a "superhuman task." The question is how the Commission would perform it. It seems appropriate to quote at this point the expression of the Commission that "it is both human nature and the lesson of history that unlimited power induces misuse of that power."

The views of the Commission in regard to rate fixing are expressed in its annual reports. The following "nice derangement of epitaphs" first appeared in the Annual Report for 1893, and has ever since gone echoing down the corridors of time:

> To give each community the rightful benefits of location, to keep different commodities on an equal footing, so that each shall circulate freely and in natural volume, and to prescribe schedule rates which shall be reasonable, just to both shipper and carrier, is a task of vast magnitude and importance. In the performance of that task lies the great and permanent work of public regulation. (Annual Report for 1893, p. 100.)

This makes one think of Alice in Wonderland after she hears the poem of Jabberwocky. "It seems very pretty," she says, "but it's rather hard to understand; somehow it seems to fill my head with ideas, only I don't exactly know what they are." Can anyone tell what they are—what these phrases mean? Certainly the Commission has not done so in the past eight years, notwithstanding its customary expansiveness. What are the rightful and what the wrongful benefits of location? Chicago thinks that Boston's rates to southeastern points are too low. Even if that be so, perhaps Chicago is enjoying the rightful benefits of location because its rates have never been shown to be unreasonable; but is Boston enjoying the wrongful benefits of location because water competition makes its rates lower; would it be rightful for Chicago to have the same rates in the absence of water competition? What different commodities are to be kept on an equal footing—cord wood and pig iron, or soft coal and Medford rum, or potatoes and molasses? Can anything determine the natural volume in which commodities shall move save those natural laws over which members of the Commission have often made so merry? Will the Commission order any commodity circulating in unnatural volume to "cease and desist" from circulating in more than the natural volume? And if its circulation should be below the natural volume, will the Commission seek a mandatory injunction compelling the laggard commodity to circulate more freely?

As long ago as his article in the North American Review for November, 1898, Mr. Prouty said that—

> A freight rate is a peculiar thing, and what seems utterly inconsistent upon the face is often found to be entirely proper when the facts are developed.

Yet he now says in his public addresses that rate making is not much of a trick—so easy that any lawyer can do it. In his official capacity, however, his views of rate fixing are much more serious.

So, too, the Commission has said:

> No one who understands the intricacies of transportation would care to assert that the determination of a just rate or the decision as to what constitutes discrimination is an easy task.

Attention may, therefore, be called particularly to this luminous declaration regarding the principles of rate fixing.

> To some extent the principles upon which taxation rests must be allowed in fixing a just rate; to some extent the result of the rate upon the development of industries must be taken into the account in all decisions which the Commission is called upon to make; to some extent every question of transportation involves moral and social considerations, so that a just rate can not be determined independently of the theory of social progress. (Annual Report for 1895, p. 59.)

These considerations, it will be noticed, do not include reasonable compensation to the owners of the railroads. But what industries are to be developed, because as some are developed others may be dwarfed? What moral and social considerations, and what theories of social progress are to be taken into account and to what extent? Who knows?

Again:

> Within certain limits it is good policy for the railway manager to increase his tonnage, even at the expense of reducing the rate per ton. Just how far this rule applies no one can tell.

The limits are certain, but no one can tell what they are!

The merchant who buys an article for a definite price knows when he sells it whether he makes or loses by the transaction, and the manufacturer, as a rule, has a pretty accurate idea of the cost of production, but the railroad operator can not ordinarily say whether he should or not as a matter of policy take traffic at a certain price. (Annual Report for 1895, id., p. 17.)

The freight rate is a complex problem when applied to almost all competitive traffic. Very few people not acquainted with the subject have any idea how difficult the solution of that problem is. (Annual Report for 1898, p. 15.)

It is often difficult to say what constitutes a reasonable rate, and more difficult to give in detail the reasons that led to the conclusion reached; although the Supreme Court of the United States has given certain rules by which to test the reasonableness of transportation charges, and although the Commission has endeavored to apply those rules, yet, whenever it has interrogated railway officials as to whether or not they are governed by them when making rates of transportation, they have invariably answered in the negative and said that to do so would be impracticable. The carriers do not apparently possess the necessary data for that purpose, and there is at present no other source from which the Commission can obtain such data. (Annual Report for 1903, p. 54.)

The rules mentioned are announced by the Supreme Court as the safeguards against involuntary confiscation of property. (169 U. S., 546.) How ludicrous to ask the carriers whether they are taking their own property without due process of law because their rates are too low!

Discriminations between localities or classes of traffic can be redressed only by the exercise of sufficient authority to readjust rate schedules to be observed in the future on the basis of relative justice. (Annual Report for 1904, p. 9.)

Not here a little and there a little "after complaint and investigation," but rate schedules "on the basis of relative justice."

The great bulk of our orders * * * must pertain to the future. They will be orders fixing either a maximum or a minimum rate. (Annual Report for 1897, p. 35.)

It is probably near the truth to say that the cases now pending before the Commission directly or indirectly affect almost every locality, and therefore nearly all of the people of the United States. (Annual Report for 1904, p. 29.)

And yet the Commission has persisted in saying that general rate-fixing power is not sought!

In connection with this vast programme of regulating the affairs of the country generally, it seems proper to mention that during 1901 it became necessary to conduct an official examination of the office of the Commission itself. But the bright light of "publicity" which illumines the business of the carriers was tempered in this case; the report of the official who conducted that investigation has never been made public and has remained curiously inaccessible.

It is not too much to say that the views thus expressed indicate an utter absence of any tangible principles upon which the Commission would proceed in endeavoring to establish how much railway property should be allowed to earn. They concede, too, complete inability to carry out the rules laid down by the Supreme Court for the protection of the constitutional rights of those owning such property.

THE PAST RECORD SHOWS THAT THE COMMISSION'S ACTION IN LITIGATED CASES HAS BEEN ALMOST INVARIABLY ERRONEOUS.

The past record of the Commission shows the danger of such a grant of future power. From its creation in 1887 until October,

1904, the Commission rendered 297 formal decisions, an average of about 17½ per annum. Action favorable to the complainants was taken in 194, or about 55 per cent of the cases decided, so that the complaints coming before it which the Commission held to be well founded averaged 11½ per annum. In about 80 per cent of these cases the carriers complied with the Commission's decisions. Since 1887, 43 suits in all have, however, been instituted to enforce finally the orders of the Commission as to rates. Of these only 34 have been finally adjudicated. This is less than 2 cases per annum. In one case the Commission was sustained at circuit and there was no appeal, as the matter was unimportant; in one case it was sustained in part by the Supreme Court. These were both cases of discrimination between localities. In the other 30 cases the Commission was reversed. This shows 1½ affirmances and 32½ reversals. Some of the early reversals were due to the Commission's persistent claim of rate-fixing power, notwithstanding the decisions of the circuit courts to the contrary.[a] But that matter was settled finally by the Supreme Court in 1896 and again in 1897; yet the reversals have gone on since in about the same way. In his address before the Boston Economic Club, on March 10, 1905, Mr. Prouty said:

> As a practical matter, I affirm that the court was uniformly wrong and that the Commission has been uniformly right.

Defeated litigants sometimes express themselves in that way about the courts, but it is somewhat remarkable for the leading member of an inferior tribunal which is almost invariably reversed to publicly express the view that the appellate courts have uniformly been wrong. It illustrates the spirit in which the judgments of the courts have been received.

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[a] The above facts are established by an independent examination of the subject made by Mr. H. T. Newcomb, of Washington, which has been embodied in two pamphlets recently published, one entitled "The Work of the Interstate Commission," and the other "The Federal Courts and the Orders of the Interstate Commerce Commission." The results differ slightly from those stated in the recent report of the Interstate Commerce Commission in reply to the resolution of the Senate. This report states that there have been three cases of excessive rates found by the Commission which have been sustained by the courts. These are enumerated as the Minneapolis Case (5 I. C. C., 571), the first Colorado Fuel and Iron Case (6 I. C. R., 488), and the Savannah Naval Stores Case (8 I. C. R., 377). In point of fact, in the Minneapolis Case there was no decision by any court, and the Commission's claim that it was sustained seems to be based upon the assertion that while the case was pending the carriers substantially complied with the action of the Commission. In the Colorado Fuel and Iron Case the Commission filed a petition to enforce its order and a plea to the jurisdiction was overruled, but there was no decision on the merits, as the carriers complied with the order. Thereafter the carriers raised the rates, claiming a change in conditions, and the Commission sued to enforce its original order. When the case reached the circuit court of appeals the Commission's order was not sustained, but overruled (101 Fed. Rep., 779). The Savannah Naval Stores Case is shown, by the opinion of the Commission, to have been really a case of discrimination rather than of unreasonable rates.

In making up the list of cases of unjust discrimination decided in its favor, the Commission, apparently to swell the number, included the three cases just given, and added thereto the Social Circle Case (4 I. C. R., 744), the New York and Northern Case (3 I. C. R., 542), the St. Cloud Case (8 I. C. R., 346), the Tifton Case (9 I. C. R., 160), and the California Orange Routing Case (9 I. C. R., 182), making eight in the course of eighteen years. In point of fact, there was no court decision on the merits in any of these additional cases except the Social Circle Case and the Orange Routing Case. The Commission's claim

The Commission's excuse has been that these reversals have always been upon the law and not on the facts. This is quite erroneous. But if it were the case, what shall be said of the competency of a tribunal of lawyers whose decisions have been almost invariably reversed for errors of law? Is that condition aided by Mr. Ripley's suggestion (p. 22), in which Mr. Prouty joins (p. 81), that a number of cases involved the same error of law? How many times must a tribunal repeat an error of law before it should be held to realize its error? And if the Commission was always wrong on the law, what need have the courts had to consider the facts in detail? This result, too, was not due merely to any early uncertainty as to the law, but continues as actively as ever. Within the last few months the courts have overruled the two most important decisions of the Commission which were pending—namely, the Nebraska Long and Short Haul Case and the case regarding rates on hay and straw, to which so much reference has been made in the course of these hearings. The reversal in the latter case was upon the grounds that the Commission had sought to exercise power which the Supreme Court had held in 1896 was not conferred by law, and also that its standard of comparision of rates was erroneous. It considerably impairs the force of the Commission's contention for power that the illustrations in support of it consist for the most part in cases wherein the courts have already held that the Commission was in error.

In other words, about 93 per cent of the decisions of the Commission which have been passed upon by the courts have been held to be erroneous. That is the ultimate fact, which is not modified by the Commission's various explanations. In case, therefore, the Commission had the future rate-fixing power, so far as its decisions were in force until the courts passed upon them, and unless the court's power of review extended to all questions before the Commission, injustice would be accomplished in 93 per cent of the cases. For this there would be no remedy, because no recovery could be had from those whose goods had been carried at unjustly low rates.

In connection with this may be cited some expressions of Mr. Prouty contained in an article which he published in the Forum for April, 1899:

> By the time a decision is reached, the occasion for the interference of the Commission has usually ceased, owing to changed conditions. It is of the very essence of regulation that the regulating body shall be able to apply an immediate remedy.

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seems to be based upon the fact that the carriers complied with its orders while the cases were pending.

This reduces the cases in which the courts have finally affirmed the Commission to three, none of which were cases of unreasonable rates. These were the Savannah Naval Stores Case, in which the circuit court sustained the Commission and the railroads complied with the order without appeal; the Social Circle Case, in which the Commission was sustained by the Supreme Court in small part only, and the Orange Routing Case, where there was considerable difference of opinion among the Commissioners, and the question involved was not one of rates, but of the right of the carrier to decide the route which shipments should take. In this case an appeal is still pending.

It will be seen, therefore, that no case of unreasonable rates has ever been sustained; that one case of discriminating rates was sustained by the circuit court and there was no appeal; one case of discrimination was sustained by the Supreme Court in small part, and the other case upon which the Commission relies did not involve the question of rates. In all other cases the Commission has been overruled. The total number was 34. The result may be rated as 1½ affirmances to 32½ reversals.

That is to say, the remedy should be immediate, because when the question is brought before the courts it will be unnecessary, and, as the record shows, probably erroneous!

THE PROPOSED LEGISLATION WOULD GIVE THE COMMISSION FULL POWER OVER ALL RATES.

It is constantly claimed that general rate-making power is not sought, and this statement was repeated in the Commission's Report for 1904 (p. 8). The President's annual message, too, said:

> I am of the opinion that it would be undesirable, if it were not impracticable, finally to endow the Commission with general authority to fix railway rates.

Mr. Bacon earnestly repudiates any such desire (pp. 12, 13, 23, 75), and states that the power is limited "to a complaint made by a shipper or by a sufferer from excessive or extortionate rates" (p. 13), and that, too, notwithstanding that the Supreme Court has held that a complaint may be filed by any person whomsoever, although he be absolutely without interest (194 U. S., 25). Mr. Prouty joins in disavowing any effort for general rate-fixing power (pp. 34, 49, 57, 58), and Mr. Taft's recent speeches have been to the same effect.

Yet it is obvious that the legislation now sought would have the effect of giving the Commission complete power over all rates. This point has already been adjudicated. In its Annual Report for 1904 (p. 8) the Commission says:

> The amendment now recommended would confer in substance the same power that was actually exercised by the Commission from the date of its organization up to the time when the Supreme Court held that such power did not exist.

The precise effect of this power has been clearly stated by the Supreme Court as follows (167 U. S., 510):

> There is nothing in the act requiring the Commission to proceed singly against each railroad company for each supposed or alleged violation of the act. * * * So that if the power existed as is claimed there would be no escape from the conclusion that it would be within the discretion of the Commission, of its own motion, to suggest that all the interstate rates on all the roads of the country were unjust and unreasonable, notify the several roads of such opinion, direct a hearing, and upon such hearing make one general order reaching to every road and covering every rate.

The Commission itself, or any person whomsoever (194 U. S., 25), might, therefore, institute a proceeding which would include an unlimited number of carriers, and attack innumerable rates. There have been several cases in which the Commission has proceeded very nearly in this way. Illustrations of this are that the Import Rate case, decided in 1894 (2 I. C. R., 658; 3 Id., 417), involved the rates upon all shipments from abroad to any interior points throughout the country, and the Supreme Court said that the orders therein, "instead of being regulations calculated to promote commerce and enforce the express provisions of the act, are themselves laws of wide import, destroying some branches of commerce that have long existed, and undertaking to change laws and customs of transportation in the promotion of what is supposed to be public policy" (162 U. S., 234); the Maximum Rate case (4 I. C. R., 592, 617), decided in 1894, involved in one proceeding practically all rates on southbound business east of the Mississippi River, and the Business Men's League case (9 I. C. R., 318), decided in 1902, involved substantially all

rates from the Mississippi to the Pacific Ocean. As the Commission said, in its Annual Report for 1893 (p. 13):

> Every case before the Commission, however trivial it may appear, involves in its disposition the formulation of principles under the law which have important bearing upon the business and the commerce not only of the immediate locality but often the entire country.

In its Annual Report for 1904 the Commission said (p. 29):

> It is probably near the truth to say that the cases now pending before the Commission directly or indirectly affect almost every locality, and, therefore, nearly all of the people of the United States.

In his testimony at the present hearing Mr. Bacon has said:

> There are three cases within the past year in which large sections of the country are interested—an immense population—one of which covers a large part of the Pacific coast; another covering the southeastern section of the country, with reference to lumber; and the third covering the whole country with reference to hay. * * * The rates from the different districts are so interlaced with one another that they must be considered as a whole (p. 26).

Mr. Prouty says that the Commission has not a case pending which does not involve a future rate and that many cases involve 1,000 rates apiece (p. 55).

And, nevertheless, the Commission and Mr. Prouty and Mr. Bacon and Mr. Cummins and Mr. Taft have overruled the Supreme Court's definition of the extent of the power and disregard the method in which the Commission has sought and still seeks to exercise it—they still repeat the illusory contention that general rate-fixing power is not sought.

The extent of this power may be judged from the fact that there are annually filed over 130,000 tariffs, representing probably at least 1,000,000 rates; that the gross earnings of the roads last year were slightly under $2,000,000,000, and the capitalization $10,000,000,000, which is dependent for its value wholly upon earning power; that the internal commerce of the country during last year was about $22,000,000,000 in value. It should be plainly understood that the proposed legislation places these vast interests under the practically discretionary control of the Commission. Much force is added to this consideration by the fact that the Attorney-General has given it as his opinion that the Commission would be independent of the courts so long as their rates did not amount to confiscation.

But the change proposed would be no less dangerous even if the Commission's power were confined to dealing with a limited number of rates at a time. Every varied and complicated business must be treated as a whole. It is impossible to dissect it and treat its numerous parts separately in accordance with abstract rules, or, as the Commission says, "moral and social considerations and the theory of social progress." If the future of the business is to be subject to the control of those whose chief function would be to appease excited litigants, it would be better that such action should affect the business as a whole than that its income should be cut down by piecemeal.

The claim that the present plan has any conservative character, or that anything more dangerous could be devised, is based upon misconception of its real scope. Nothing could be more dangerous to the value of railway property than the system now proposed of committing its future to the control of a political official body without interest therein or responsibility for the results of its operation. Constant

reductions, now here and now there, might easily destroy the earning power of the property.

THE COMMISSION WOULD CONTROL THE PROSPERITY OF ALL LOCALITIES.

Quite irrespective of the reasonableness of the rates in themselves, the proposed bills contemplate conferring upon the Commission power to determine what rates shall prevail at respective competing points. This would concentrate in a single political board power to determine the commercial and industrial future of all the various localities throughout the country. As Mr. Prouty said in an article in the Annals of the American Academy for January, 1900:

> Few people have any adequate conception of the importance, in a commercial way, of slight changes in the freight rates. Every community and every pursuit is so dependent upon the agencies of transportation, so directly affected by the cost of this necessary service, that an inequitable adjustment of rates between competing towns or commodities would produce serious and widespread disaster. (Annual Report for 1893, p. 6.)

In the Differential case the Commission fixed rates for the purpose of "distributing" the foreign commerce of New York among the ports of the Atlantic coast, in apparent disregard of the constitutional provision that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another" (Art. I, sec. 9, subd. 5); and it has just repeated this process of distribution by approximately splitting the differences which it sanctioned in its earlier proceeding. On the other hand, it has recently held that "it is no part of its duty to equalize differences in the natural advantages of localities through the adjustment of tariff rates." (Annual Report for 1904, p. 45.)

Either of these varying principles can be applied equally to any locality in the country as may suit the fancy of the Commission. Paraphrasing the Commission's language the proposed legislation would "put into its hands the power to determine what localities shall pay and what receive tribute." (Annual Report for 1897, p. 45.) If, by manipulation of rates, the Commission should succeed in producing a general condition of equality notwithstanding actual advantages, that would be the most serious blow which commercial competition has ever received. As 93 per cent of the Commission's orders as to rates which have come before the courts have ultimately been overruled, it is obvious that the localities affected would suffer much unjustifiable injury, and it is impossible to foretell what disastrous results would follow the exercise of such powers.

Moreover, political rate fixing would establish rigid methods of transacting business which would arrest commercial progress. As already said, the most effective cause of reduction of rates is the effort of traffic officials to enable their respective shippers to extend their business and constantly reach further markets and consumers.

> The location of new business enterprises is frequently settled since the passage of the act to regulate commerce, as well as before, not so much by the wishes of those who control them and the advantages for economical production or trade afforded at particular places as by the favorable transportation rates which railway managers can be induced to put in force. (Annual Report for 1894, p. 57.)

This process of development can be continued only through gradual reductions of rates, and in its continuance shipper, carrier, and consumer are alike interested. The effort of the railways is to "keep everyone in business—to secure the greatest good of the greatest number." It is for the interest of the public that a railroad should have the right to develop an industry on its own lines (Mr. Prouty's statement, p. 50). But this process will be arrested if the rates are finally subjected to the veto of a body or an individual having no substantial interest in the success of the transportation business or of the industries upon the several lines. As Mr. Bacon has said on these hearings (p. 21)—

> If the cost of transportation may be figured out to a certain amount per ton per mile, and if that cost were applied upon every commodity offered for shipment, it would exclude from transportation at least nine-tenths of the traffic of the country. If the Government undertakes to establish the rates primarily, it must reach to a large extent a mileage basis of establishing those rates, and, in my judgment, nothing would be more detrimental to the commercial interests of the country than the establishing of such a basis (p. 78).

Every rate once fixed would be incapable of change without a proceeding before the Commission as dilatory as a lawsuit, and as the Commission proceeded, the scope of this rigid condition of rates would constantly extend. In this Mr. Prouty agrees (p. 57). Every practical man must realize that business is carried on successfully by negotiation and agreement of the parties rather than by the judgment of any tribunal. "Business by lawsuit" would be a lamentable failure. There is no successful branch of business in which the general future relations of those engaged therein are regulated by public officials, whether an administrative commission or a court of justice.

In his article in the Annals of the American Academy for January, 1900, Mr. Prouty aptly described the railways as the "arteries through which the commercial life blood of this great nation flows," and President Roosevelt used the same expression in his first annual message (December 3, 1901). If those arteries become rigid the blood will cease to flow and life will end.

THE PROPOSED ACTION WOULD BE MERELY A STEP TOWARD UNIVERSAL POLITICAL DIRECTION OF INTERSTATE COMMERCE.

Congress is not given by the Constitution any special power over the carriers. The carriers, in general, are not incorporated by the National Government and receive no franchises from it. It is, therefore, erroneous to suppose that there is any special power over them arising by reason of any grant from that Government. The entire power of Congress arises from the provision of the Constitution that it shall have power to regulate commerce with foreign nations and among the several states (Art. I, sec. 8, subd. 3). But the shipper of goods is engaged in interstate commerce equally with the carrier of the goods shipped. The shipper and his business are, therefore, quite as much within the power of Congress as the carrier and its business.

Accordingly, the Commissioner of Corporations has recently suggested that engaging in interstate commerce as a means of livelihood shall no longer be a right, but a privilege to be enjoyed only by those possessing a license upon such terms as the Government shall see fit to prescribe. The proposed legislation would, therefore, be in the

direction of general socialism, which would affect manufacturers, shippers, and carriers alike, and would subject to political control the question what the citizens of the country shall be allowed to earn by the use of their constitutional rights of liberty and property.

THE REMEDY IS TO ENFORCE EXISTING LAWS BY PROMPT RESORT TO THE COURTS WHENEVER NECESSARY.

The substantial value of the Commission has been in the way of settling controversies without litigation. In that way apparently about 90 per cent of the complaints filed with it have been adjusted. This method is very useful and should be continued.

The question now is as to the remaining 10 per cent which constitute the contested cases. In 8 per cent of these the carriers have heretofore acquiesced in the recommendations of the Commission, leaving but 2 per cent to be considered. The delay in disposing of them has been due to the proceedings before the Commission. These consist in admitting all sorts of matter presented, irrespective of the rules of evidence (194 U. S., 25); long arguments; opinions by the Commission, and ultimately an order. As the Commission has itself said, these proceedings "bind nobody and go for nothing." (Annual Report for 1897, pp. 31, 33.) The Supreme Court has decided that an order of the Commission under the terms of the Constitution can have no force as an adjudication (154 U. S., 485, 489). These proceedings before the Commission are, therefore, merely dilatory and serve no useful purpose. Whatever delay exists arises there.

In the courts there is no delay of any meritorious claim. Mr. Prouty has, in some of his writings, referred to the time required "to secure the enforcement of an order of the Commission by application to the courts." It would be enough to say that such orders have not been enforced because they have almost invariably been erroneous. As already pointed out, there have been less than two cases as to rates per annum before the courts since the Commission was organized, and, with one and one-half exceptions, they have all ended in defeat of the claims asserted. In addition, the provisions as to procedure in the courts expedite these cases in every possible way. The courts act on as short notice as possible, without formal pleadings or proceedings; the constitutional protection from self-crimination has been removed by statute, so that anyone can be compelled to testify; cases arising under the statute have preference over everything save criminal cases; individuals or corporations violating the act are subject, whether shippers or carriers, to heavy fines; the provisions of the act may also be enforced by decree in equity, with subsequent contempt proceedings in the case of disobedience, and appeal lies directly to the Supreme Court in all cases. It is clear, therefore, that there can be no delay in the courts. The proper course would be for the Commission, when it is satisfied that a case can not be settled, to resort directly to the courts. This is the procedure under the Elkins law.

The difficulty at present is that the Commission attempts to act both as prosecutor and judge. It has defined itself as "a special tribunal engaged in an administrative and semijudicial capacity investigating railway rates and practices." (Annual Report for

1896, p. 71.) To these functions it is now sought to add the legislative function of making future rates. It is one of the fundamental principles of the American constitutional system that the powers of government are divided into three separate departments, the executive, the legislative, and the judicial, and that these functions must be exercised by different public servants. The attempt is to endow the Commission with powers belonging to each of these departments. In that case it would occupy the unique position of exercising all three of the powers of government. This anomaly is fully recognized by Mr. Prouty (pp. 35, 41, 45, 68). Yet with the comparatively simple functions which it now possesses the Commission's administration has been unsatisfactory, and propositions have sometimes been made by excited shippers to legislate it out of office as useless.

Mr. Prouty said before the New England Lumber Dealers' Association on January 25, 1905, that the Commission "is to be abolished not because it is inefficient, but because it has been too efficient. * * * It is not that we have neglected to perform our office, but that we have done it too well. * * * What the railway companies of this land pray for in season and out of season is an inefficient Commission; what they fear is efficiency." A record of 93 per cent of reversals does not indicate a high state of efficiency. But, aside from this, these expressions are sadly wrong; the demand, so far as it exists, has come from shippers—not from railway officials; they are too much alive to the difficulty of the Commission's functions. The demand calls to mind, however, the mining camp saloon where a sign upon the wall read, "Don't shoot the musician; he is doing his best." This feeling regarding the Commission has arisen mainly by reason of the inherent difficulties of the matter and the impossibility of regulating commercial rivalries by political agencies. With a large addition to the powers of the Commission, therefore, utter failure seems almost certain.

This course of prompt resort to the courts, without idle preliminaries, would relieve the Commission of much responsibility, but that does not seem to be what it wishes. The French went into the war of 1870 "with a light heart." But their frame of mind was positively funereal compared with the spirit in which the Commission courts the task of making rates for 210,000 miles of railroad. Over all that vast expanse its beneficent duty would be to "give each community the rightful benefits of location; to keep different commodities on an equal footing, so that each shall circulate freely and in natural volume." In doing this it would be guided "to some extent (no one knows to what extent) by the principles upon which taxation rests" (if there are any); it would "take into account the development of industries;" it would be guided, again to some extent, by "moral and social considerations" and "the theory of social progress." No doubt the Commission would discharge its somewhat indefinite duties in full recognition of these illuminating principles. But, unfortunately, the Supreme Court has defined the safeguards provided by the Constitution to protect rights of property, and these rules of law the Commission has stated that it is quite unable to apply because it "has not the necessary data for that purpose" (Annual Report for 1903, p. 54). Is it not certain that rates evolved from such conditions would stand the test of judicial scrutiny no better in the future than the Commission's decisions have done in the past?

The true remedy, then, lies in the vigorous enforcement of existing statutes, which will prevent rebates and discriminations; and resort by the Commission directly to the courts without dilatory preliminaries, so as to secure expeditious action by the only branch of the Government which is empowered by the Constitution to administer justice and determine rights of property. This remedy is fully sanctioned by the Supreme Court (189 U. S., 274); it will prevent unjust discriminations and undue or unreasonable preferences. So far as concerns reasonableness of the rates, it is obvious that the present method under which the Commission has power to pass upon existing rates has been effectual, since no case of unreasonable rates has ever been judicially established.

The historian Lecky has called attention to the fact that the great reforms of history have been effected, not by passing statutes, but by repealing them. Yet the Commission, with the avidity of Oliver Twist, has constantly demanded more statutes. But the "words of the statutes have no potency in preventing offenses and their multiplication and reiteration will not add to their effect." A record of 93 per cent of reversals, whatever may be their ground, indicates a degree of inefficiency in enforcing the law already enacted by Congress, which should be fatal to the plea for further and practically unlimited (167 U. S., 570) power.

Political rate fixing, therefore, would play havoc generally, and "business by lawsuit" would be intolerable. The country would be at the mercy of the Frankenstein which it had created. Before long the political platform of one party would demand "a square deal" for the ports of the Atlantic seaboard and that of the other for those of the Gulf. Over all the din of partisan politics would be heard what Daniel Webster called "the shrieks of locality." Every statesman in the country would be busily occupied with "regulating" in the interest of his immediate constituency, both carriers and shippers engaged in interstate commerce. The merchants and the investors would be the helpless sport of every gust of unreasoning clamor and the shining mark of every blatant demagogue.

Senator Daniel, of Virginia, appeared and submitted the following resolutions, adopted at a meeting of the citizens of Danville, Va. Senator Daniel stated that he fully concurred in the resolutions and approved of them:

At a mass meeting of the citizens of Danville Va., held May 16, 1905, under the auspices of the Commercial Association and board of aldermen and common council of said city, the following preamble and resolutions were adopted:

Inasmuch as this mass meeting of the citizens considers governmental control of railway rates the transcendent political and economic issue before the whole American people to-day;

Inasmuch as the said mass meeting also deems said governmental control of railway rates as the most vital of all issues to them in their commercial life and necessary to their continued growth and prosperity as a municipality, placing the said issue as the burning local question of the hour whose settlement will they ever fight until it is settled aright;

Inasmuch as the people of Virginia by their new constitution have ordained that railway rates within the bounds of Virginia shall be fixed by their State corporation commission, thereby adopting as far as they can the policy of governmental control of railway rates;

Inasmuch as the Committee on Interstate Commerce of the United States Senate is now, in the recess of Congress, considering the Esch-Townsend bill

for national control and fixing of railway rates by an Interstate Commerce Commission, and the said Senate committee is hearing from official representatives of the States and the people and communities of the country at large: Now, therefore, be it

Resolved, That the following public officials of Virginia are most earnestly and prayerfully requested by the citizens of Danville, in mass meeting as aforesaid, to wit, Governor A. J. Montague, Lieutenant Governor Joseph E. Willard, Attorney-General W. A. Anderson, Senator John W. Daniel, Senator Thomas S. Martin, and Representative Claude A. Swanson, of this our Fifth Congressional district, and every other Representative from Virginia, to do as follows in behalf of the masses of the people of Virginia, as well as the city of Danville, namely, to appear individually and personally, severally or jointly, before the United States Senate commission and advocate the passage of the Esch-Townsend bill. The said mass meeting is emboldened to make this request of the said public officials because most of them have before the people of Virginia already declared in favor of national governmental fixing of railway rates.

And be it further resolved, That the secretary of the Commercial Association of Danville is instructed to forward at once to each of the above-named public officials a copy of these resolutions, and then request, asking each one of them to make a telegraphic response, if possible, to the secretary, stating whether or not they will comply with the request of the city of Danville, and at what time it will suit the convenience of each to appear before the said Senate committee in advocacy of said bill.

Senator FORAKER. Mr. Chairman, I desire to reserve the right to put in this record a statement of the Ohio Shippers' Association, if they should send one. We telegraphed them a week ago they might have that privilege if they did not see fit to come on and testify in person.

The CHAIRMAN. If it is received we will put it in.

Senator NEWLANDS. I wish to make a statement in this connection. When I made my first statement in regard to the national incorporation of railways Senator Foraker submitted to me certain questions. I was willing to answer them, but he suggested I should submit my answer in writing. I am ready now to be examined by Senator Foraker or any members of the committee regarding the plan which I suggest. However, I shall simply ask permission, if that is not desirable and time will not permit, to file here and have published the answers to the questions which Senator Foraker has put to me.

Senator CULLOM. I have no objection to that as a member of the committee. I do not want other people to send papers in here after we have gone home.

STATEMENT OF MR. A. R. URION, OF CHICAGO, ILL., REPRESENTING THE ARMOUR CAR LINES.

Mr. URION. Mr. Chairman and Senators, I will try to be as brief as possible in my remarks, but Mr. Ferguson has already occupied, I believe, during the winter some two weeks or more of the time of the committee, and during that time he was able to say a great many things about the private cars. I think I can say all that appears necessary, or that I may be able to say, in two or three hours, perhaps less.

Senator DOLLIVER. Have you your remarks in writing?

Mr. URION. No; I have not.

Senator CULLOM. Go ahead.

Mr. URION. In referring to the private cars, I want to be understood as confining my remarks entirely to the refrigerator cars.

The provisions of the act to regulate commerce apply to any common carrier or carriers engaged in the transportation of passengers

or property. The act further provides that the "term 'transportation' shall include all instrumentalities of shipment or carriage."

The private car companies, and I refer only to companies owning refrigerator cars, are engaged in a twofold undertaking.

First, as owners, renting to the railroads specially constructed refrigerator cars suitable for the carrying of fruits and berries, which cars the railroads need only at certain seasons of the year. The rental paid to the car companies by the railroads is in the nature of a mileage, usually three-quarters of a cent a mile.

Second, rendering to the shippers in these cars, when so required, a special service independent of that of carriage, the refrigerating of the contents by placing ice in the bunkers of the car at stated local points.

These are the functions of the private refrigerator car companies.

Combining the two undertakings, a portable cold-storage warehouse is provided and rented to the railroads, and to the shipper therein is furnished refrigeration or insurance on the contents.

On this statement of fact the question presented is, whether or not the private refrigerator car companies are engaged in transportation under the definition of the term given in the act. If so, are not these companies already within the purview of the interstate-commerce act?

The gist of the act is transportation in its broad sense as applied to a common carrier, the act reading "this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property."

Now, transportation is an inseparable incident of the undertaking of a common carrier, and three things are necessary in order to charge one with a common carrier liability, and this, I think, is the true test of what constitutes a common carrier. First, he must be a transporter; second, he must make a contract, either express or implied, of transportation, and, third, he must receive a compensation for transportation.

It seems to me the proponents of legislation against the private-car companies are too hasty, or have erred in coming to the legislative branch of the Government for relief, if relief is needed. Would they not have better gone to the judicial branch of the Government and sought a judicial determination of the question of fact and law, which I have attempted to present to you, as to whether or not the private-car companies are engaged in the business of transportation, which term, it is declared in the act to regulate commerce, "shall include all instrumentalities of shipment or carriage."

When the judiciary has determined the question, if it should be in the negative, then Congress could be appealed to to provide a law. If, however, judicial determination was that the law already on the statute books was sufficient, then no legislation would be necessary.

Senator CLAPP. The courts can not say whether it was deficient or not; they might say it was the subject for the law.

Mr. URION. But if it was a question of fact, they might pass upon it.

Senator CLAPP. Whether it was law or not would be a legislative question after that.

Mr. URION. It seems to me to legislate now before the judicial question is determined would be premature. For if, in point of fact, the private-car companies be not common carriers, and this it seems can only be determined by the judiciary, will Congress attempt to

legislate it into the realm of common carriers any more than it would undertake to legislate declaring keepers of livery stables in Washington to be hotel proprietors?

I do not want to be understood as contending at this time that Congress may not legislate private-car companies to be common carriers, but for the moment granting that it may, there would still be a question for the judiciary to determine, independent of whether or not they were in fact common carriers, the further question as to whether or not the service they perform is one of interstate commerce. This question would still be open for judicial determination, even though the car companies were common carriers, for our Supreme Court, in the Knight case, reported in 192 U. S., page 21, has said, quoting from Mr. Justice Brewer's opinion:

> It is the character of the service, not the character of the carrier, that determines whether it is interstate commerce or not.

Doubtless you are all familiar with this case, but I may be permitted to consider it when I explain that it will be for the sole purpose of applying it to the service of refrigeration. This case disposed of a warmly contested litigation as to whether charges made by a railroad company engaged in interstate commerce for the use of a cab service instituted and maintained by it for passengers going to or leaving its station in the city of New York, holding they were for a purely local service and exclusively within the jurisdiction of the State. The application is so pat as to refrigeration being a local service that I beg to quote from the opinion:

> On the other hand, the cab service is exclusively rendered within the limits of the city. It is contracted and paid for independent of any contract or payment for interstate transportation. If the cab which carries passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to his carriage also so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply hay and grain for the horses also engaged in interstate commerce, and where will the limit be placed?
>
> It is the character of the service, not the character of the carrier, that determines whether it is interstate commerce or not.

The process of icing, which constitutes refrigeration involves (*a*) the sale of the ice itself, which is either natural and taken from its place of storage, or artificial and supplied from the plant where manufactured; (*b*) the furnishing of the labor necessary to transfer the ice to the receptacle provided therefor in the stationary car at some local point. When these two acts have been performed the transaction is complete. Is it not for the judiciary to determine whether this is transportation, whether it is an instrumentality of shipment or carriage, and I repeat that inasmuch as there are questions for judicial determination before the Interstate Commerce Commission can exercise jurisdiction over charges for services which the car companies perform, either with or without an additional act of Congress declaring said car companies to be common carriers, why legislate at all, when the courts may, after inquiring into the facts, determine that the present act to regulate commerce already includes the private car companies?

I venture the opinion that there is already too much unused and unapplied law on the statute books for Congress to want to legislate to further provide a remedy by enacting a law to fit a case presented when the only trouble with the law already provided for is that it

has never been judicially passed upon. The company which I have the honor to represent has, through its counsel, been consistent in its efforts before the Interstate Commerce Commission on each of the several times it has been indirectly haled before it, beginning with the Consolidated Forwarding Company case, instituted in California in the winter of 1899 and 1900, down to the hearing in Chicago last week in the Pere Marquette case, to have that body make an order directly affecting the service which it performs, either with respect to the furnishing of the cars to the railroads or the refrigeration of the contents for the owners or shippers, so that it might go to the courts under that order and have the question of jurisdiction, which is the question I have presented to you here, whether or not its undertakings and the services it performs are within the act to regulate commerce, judicially determined. Success has never crowned our efforts to have the Commission enter an order, and the skill displayed by it in avoidance is remarkable. Later, in the course of my remarks, if I may be permitted, I want to discuss this feature, but prefer not to do so until I take up with you the motives underlying the attack upon the private car companies, resulting in the call for legislation, when I may have some pertinent remarks to make, and which I shall make from the record, touching the Commission's attitude in the matter.

Even though the judiciary should determine when the question is presented, as it should be before Congress legislates further on the subject, that the private-car companies are not common carriers within the meaning of the act, and that the term "transportation," as used in the act, applies only to common carriers, there is yet another law on the statute books, which Congress has provided and which is even broader and more comprehensive in its terms, since it applies to "corporations" engaged in commerce among the several States, and does not limit the corporations to common carriers nor the objects of the corporations to transportation. I refer to the act of Congress creating the Bureau of Corporations. The Commissioner of Corporations is vested with "power and authority to make, under the direction and control of the Secretary of Commerce and Labor, diligent investigation into the organization, conduct, and management of the business of any corporation, joint stock company, or corporate combination engaged in commerce among the several States and with foreign nations, excepting common carriers."

There is a further provision in the act creating the Bureau of Corporations which I now quote:

> In order to accomplish the purposes declared in the foregoing part of this section, the said Commissioner shall have and exercise the same power and authority in respect to corporations, joint stock companies, and combinations, subject to the provisions hereof, as is conferred on the Interstate Commerce Commission in said "Act to regulate commerce," and the amendments thereto in respect to common carriers, so far as the same may be applicable, including the right to subpœna and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths.

The private car companies need not be legislated into the realm of common carriers to come within the purview of this act. All that is necessary is that they be engaged in interstate commerce. If the functions which they perform, that of renting cars to the railroads and the other of furnishing refrigeration to the shippers in those cars are either of them acts of interstate commerce, and they may be, for

since the decision of our Supreme Court in the Swift case, the so-called Beef Trust case, there are few undertakings of large business concern that are outside of the pale of interstate commerce, what further legislation is necessary? If they are not engaged in interstate commerce through their undertakings of furnishing cars to the railroads and refrigeration to the shippers, and I again say this is the question for the judiciary to dertermine, what would it avail, even though Congress passes a law declaring them to be common carriers, in view of the holding of our Supreme Court in the Knight case that a purely local service, even though performed by a common carrier, is not interstate commerce and that it is the character of the service, not the character of the carrier, that determines whether it is interstate commerce or not.

I wanted to call the attention of the committee briefly to the laws already on the statute books, in order that they might be applied to the request for further legislation, to determine in the minds of the committee whether further legislation is necessary. On that point I have nothing more to say.

Now, it may be remarked——

Senator FORAKER. Before you leave that, if it is not interrupting you too much, how would you proceed to remedy the wrong, if you should find it to be established, in the nature of overcharging for icing and refrigerating, in a case where a common carrier has entered into an exclusive contract for the use of your refrigerator cars? Under which of these statutes that you have cited would you have us proceed, and in what way could we proceed?

Mr. URION. That is something I do not know. I have said if we are common carriers already, if we are within the act already, then the Interstate Commerce Commission have jurisdiction of the question.

Senator FORAKER. Yes; but I am assuming that you are not a common carrier, as you have indicated your belief to be. You are clearly enough included under the act creating the Bureau of Corporations.

Mr. URION. Yes.

Senator FORAKER. But assuming that you are not under the jurisdiction of the interstate-commerce law, because not engaged in interstate commerce, yet you have an exclusive contract with a railroad that your cars alone shall be used. The shipper says, "Although it is necessary for me to use refrigerator cars, it is only the cars of this particular company in which I can ship, and this company charges me too much." How are you going to remedy that?

Mr. URION. If they are not common carriers and yet are engaged in interstate commerce—and I refer again to the Swift case—then the Bureau of Corporations may be appealed to and afford relief.

Senator FORAKER. What can be done in the Bureau of Corporations?

Mr. URION. Well, what would the Interstate Commerce Commission——

Senator FORAKER. I am simply asking for information.

Mr. URION. I confess I do not know.

Senator FORAKER. In other words, you do not know of any remedy for that under the law as it now exists?

Mr. URION. No, sir; and if it be determined as a question of fact,

with all the laws that are passed—that it is not interstate commerce—then it must be regulated by the States.

Senator FORAKER. If it should be held that mere refrigeration, although given in connection with a portable car, is not interstate commerce, you have no remedy to suggest, as I understand?

Mr. URION. No; I confess I have not.

Senator FORAKER. Well, proceed then.

Mr. URION. It may be remarked in passing that those who have been heard before this committee, as was also the case before the House committee in favor of legislation against the car companies, have not been the growers and shippers, the producer, or the consumer, but the middle man, and I will admit that his business, conducted on a commission basis of receiving consignments and selling them for account of the producer, has been interfered with. He has been and is being rapidly forced into the position of a merchant who must buy outright from the producer—trade on his own capital. The statements of the few growers who have appeared before you from Tennessee, from Maryland, from West Virginia, from Delaware, from Georgia, and, I think, from Michigan, have told you that the evolution of the business, by reason of the private car and the service of refrigeration, the fact that these cars may be shipped by them any and every where in the United States, has broadened their markets, and as a wider distribution of a commodity creates a demand, instead of their being compelled to consign their commodities to be sold for their account, buyers now come to the orchard and to the berry fields and buy direct for their own account.

I wish to touch only briefly on the remarks of Mr. Ferguson. He was heard before this committee at some length during the winter, and I want to say that he first appeared before the Interstate Commerce Commission in June, 1904, complaining about the exclusive contract with the Pere Marquette Railroad. The complaints, of course, were with respect to the fruit season of 1903, because the season of 1901 had not arrived. In that year 7,000 carloads of peaches were shipped out of the State of Michigan. Mr. Ferguson testified before the Interstate Commerce Commission that he handled but 10 cars of Michigan peaches out of a total of 7,000 cars, and that his total business for the year 1903, from all over the country, was between 40 and 50 cars, and that he was a receiver of these cars and not a grower or shipper. He represented to this committee that he was the accredited representative of ten associations, which statement I accept, but I would like to read them.

There are the Wisconsin Master Butchers' Association, Lake Superior Butchers' Association, Wisconsin Retail and General Store Association, Duluth Retail Grocers' Association, Superior Retail Grocers' Association, National Retail Grocers' Association, Minnesota State Retail Grocers' Association, Duluth Fruit and Produce Exchange, Duluth Commercial Club, and Western Fruit Jobbers' Association. It needs no comment that retail butchers and retail grocers do not raise or ship fruits and berries in carload lots nor receive them in carload lots. The Duluth Fruit and Produce Exchange probably does receive some fruit in carload lots. That organization has 11 members. The Western Fruit Jobbers' Association also doubtless receives fruit in carload lots; it has a membership of 90.

Mr. Ferguson comes before this committee with a fund provided

by these various associations, on solicitation by a committee of which he is the chairman or was the chairman—a fund of $10,000. This is shown by the annual report of the Western Fruit Jobbers' Association, issued last December. That is all I care to say about Mr. Ferguson.

Much has been said about exclusive contracts. The necessity for them has been put before the committee by Mr. Robbins. I shall only remind you that the courts of this country have several times declared them lawful. I recall the supreme court of Ohio very recently—I think in January last—declared that an exclusive contract between the Union Depot Company, Columbus, I think, and certain transfer or carriage lines, by which other transfer companies' carriages were barred from the station grounds and the exclusive right to solicit passengers and baggage was given to one company. As late as last week the supreme court of Texas declared the exclusive contract between one of the railroads of that State and the Pullman Company to be lawful, and not in violation of the antitrust law of that State, which I believe is the Gibraltar of antitrust laws. More than that, the Supreme Court of the United States, in the Express Company and Pullman cases, declared it lawful. Furthermore, I think, our Government has placed its stamp of approval upon exclusive contracts in the making of the stamped-envelope contract with the Crane Company, of Massachusetts; likewise the exclusive privilege granted the Pennsylvania Railroad Company for its cab service and the exclusive use of the street in front of its station for its cabs right here in Washington.

I only mention these things simply to show that the exclusive contract is nothing new, and that it is not unlawful and very often is necessary.

In 1897 the first exclusive contract to which the Armor Car Lines were a party was entered into with the Southern Pacific Railroad. That contract was presented to the Interstate Commerce Commission as evidence in the hearing of the Consolidated Forwarding Company Case, in January, 1900, and was a matter of public record all those years, from 1900 down to 1904, when the discovery was made by Mr. Ferguson that such a thing as an exclusive contract was in force with the Pere Marquette road. That so-called secret exclusive contract has been talked about and written about in newspapers and magazines as though it was the invention of Satan and the Armor Car Lines. Ferguson hadn't yet discovered in 1904 that three years prior to that an exclusive contract had been entered into with two railroads in North Carolina on petition and solicitation of the growers of that State. (See Record, Urion, 179.) Nor had he discovered that an exclusive contract two or three years before had been entered into with the Central of Georgia Railroad on the solicitation of the growers, nor had he discovered that the very Pere Marquette contract was on file with the Interstate Commerce Commission.

Senator DOLLIVER. Who put that contract on file with the Interstate Commerce Commission?

Mr. URION. The testimony before the Interstate Commerce Commission taken last June shows that the Pere Marquette Railroad filed it there. I think I can refer to that evidence. All these years, from *1897 down to* 1904, there had been exclusive contract after exclusive *contract,* all entered into for some good business reason. There is

much in the record, and with the permission of the committee I am going to file the testimony taken before the House committee. I think there is the testimony of fully a dozen growers and shippers from different parts of the country where these exclusive contracts were entered into:

Senator KEAN. Is that the testimony taken last winter?

Mr. URION. Yes. That testimony will show that many of these exclusive contracts were entered into by competition, that there had been three or four different car lines operating in a section, and that none of the car lines knew what proportion of the crop they would move out. They could not prepare for it with the number of cars necessary to move it; they could not anticipate in advance the amount of ice necessary to refrigerate the contents of the cars, and the result was that the shippers very often found themselves without cars, and when they had cars the cars of the company they were using had no ice, with the result that the growers themselves went to the railroads and asked for relief and requested that some one car line be given an exclusive contract. I make that statement as a fact, both with respect to North Carolina and to Georgia, and I am not sure but that applies also to some extent to Michigan. I think the Pere Marquette Railroad sent out and interviewed many of the peach growers in that peach section before they entered into that exclusive contract.

Now, with reference to the reasonableness of the refrigeration charges—I will simply touch briefly on these points—I want to say that there is more than one side to the question.

All the testimony that has ever gone before the Interstate Commerce Commission or that has gone before the committees of Congress has rested upon two things, the cost of ice and the cost of labor.

Judge Grosscup, in a recent address before the Union League Club in Chicago, in discussing the rate question, and his remarks can be applied with equal force to charges for refrigeration, said:

> It is easy to say that a rate should be just and reasonable. That is a mere truism. What is a just rate? Some people have said that a just rate would be that rate which, if the properties were to be reproduced at the present cost of reproducing them, would yield the owners a fair interest upon the capital invested. Would you like to have that principle applied to your own business in case the public should seek to buy it from you compulsorily? What business is there that has not grown to success? What business is there that is not the growth of years, if it is a great business? Brain, industrial experiments, the day of small things, the day of losses, all are a part of the investment as well as capital. In arriving at the reasonableness of a rate we must follow the business through the stage of experiment, through the days of growth, and we must go to the men who have thus borne the heat and toil and losses of the day; take it from its infancy as a mere venture attracting but little interest, going begging on the market. All this must be taken into consideration as well as the actual capital for which it would sell as a tangible property. No private business could stand justly on any such measurement of values.

With respect to icing, in arriving at what is a reasonable charge there should be taken into consideration not only the cost of ice, the cost of labor, and the cost of supervision—and that is where the Interstate Commerce Commission has always stopped—but also the investment, the depreciation of the properties, taxes, claims for loss and damage, which is included as one of the great hazards of the business. The hazards of the undertaking are far beyond the belief

of one who has had no actual experience. Mr. Robbins told you the other day of the great loss in North Carolina because of a condition that human foresight could not guard against, a loss of perhaps seventy-five to a hundred thousand dollars. He could have told you, and perhaps he did, of a loss of many thousand dollars in Idaho last year, way up in a district where ice can not be obtained and where it has to be stored long in advance of the shipping season. Just as the proper fruits were about to move—and, indeed, a few cars had already moved—the ice storage houses in that fruit district were destroyed by fire. There was no way to get ice in there and the fruit had to be carried as far as Ogden before it could be iced. There was a great loss, not to the growers and shippers, but to the car lines, who had to pay. In north Georgia last year, also, a loss was sustained by reason of an inadequate supply of cars. Some peach growers in that district appeared before the committee the other day and told about it. It was due to no fault or negligence, because the growers had underestimated the crop by a thousand cars and the number of cars parked in advance of the shipment was short, and when the peach crop begins to move it moves like an avalanche. Cars could not be gotten in there fast enough to meet the extra demand, and the car lines pay the loss. I could go on and enumerate other instances of great loss under the hazards of the undertaking, but these are enough to illustrate my point.

Who are the best judges of whether a charge for service rendered is exorbitant or reasonable? Certainly the one for whom the service is performed—in the case of refrigeration the grower and shipper. Many growers have been heard before this committee not complaining against the car lines or its charges and not asking for legislation to control them, but rather asking that the present conditions be let alone. It must have been observed by the committee that the proponents of legislation against the car lines have not produced a single grower. I believe I am correct in this statement, and that so far those heard to complain are the ones least interested, who have no actual knowledge of conditions, but whose extravagant statements, in many respects misstatements, as is plain to the committee without comment, are based on no firm foundation, but rather upon a lack of knowledge, upon theories and mental calculations.

I now come to a point in the discussion that I dislike very much to refer to; but we feel that so great has been the injustice done us, and that it is the root of much of the public agitation on the subject of so-called private car abuses, that in justice to ourselves, and without intending any strictures, I want to make some statements; and if what I say is plain, it is because the record is plain.

An earlier reference was made to the failure of our efforts to have the Interstate Commerce Commission make an order affecting the charges of the car lines.

In the Consolidated Forwarding Company case, before the Commission, the Southern Pacific and Santa Fe railroads were defendants. The Armour Car Lines intervened, that its interests might be protected. A large amount of testimony was introduced. Before a decision was rendered the case was fully argued to the Commission *both in* briefs and orally. On April 19, 1902, the Commission ren-

dered its opinion and disposed of the Armour Car Lines question of jurisdiction over refrigeration rates in these few words:

Whether the statute applies to the charges for refrigerating, and if so, whether those refrigerating charges are unjust or unreasonable? These questions are retained by the Commission for further hearing and investigation.

I call especial attention to the last paragraph of the finding, for it is prophetic.

The chairman dissented from this opinion. I now quote from that part of his dissenting opinion, in which we are interested.

This case presents another question which I am not willing to leave unnoticed. A considerable part of the testimony relates to the charges for rerfigeration which were alleged to be unreasonable, and the facts in that regard are quite fully set forth in the prevailing report. By the carriers and interveners it was insisted that the Commission has no jurisdiction of the refrigerator service or the charges therefor. This question was discussed at length both in oral argument and in the briefs submitted, and there is no probability that the material facts upon which it depends will be changed by further inquiry. For this reason I think it should now be decided. * * *

It was not decided. More than a year after this decision the Commission again went to California to take further testimony, and after its conclusion there was a further argument. The matter lay dormant from that time until February 11 of this year, when it appeared opportune to render a decision, and this time, touching on the question of its jurisdiction over refrigeration rates, avoids the issue by saying:

In view of the reductions in the refrigerating charges since the first hearing of these cases and the insufficiency of the evidence as to cost of icing the cars, we do not feel justified in condemning the present refrigerating charges as unreasonable. The general subject of the use of cars owned by so-called "car lines," including charges for refrigeration, is involved in another investigation by the Commission.

You will observe that again the Commission talks about another investigation, and this brings me to the Pere Marquette case.

After the testimony had been taken in this Pere Marquette case, at the June hearing, one of the morning papers quoted a member of the Commission as saying that this hearing sounded the death knell of the private car. I do not charge that such a statement was made, but it has never been denied, and that it must have made an impression highly injurious to the private-car interests is borne out by the fact that the Evening Post, of Chicago, on June 6, in an editorial in the opening paragraph stated:

It is not to be presumed that anyone connected with the Interstate Commerce Commission had any authority or warrant for predicting a decision amounting to a "death blow" to the private-car system. The investigation is not completed, if we understand the matter, for the Commission has requested the counsel to file briefs within fifteen days, and we do not imagine that that experienced and intelligent body believes in reaching conclusion first and find grounds for them afterward. The question in the first place bristles with difficulties, legal and practical, and in the second place no blow can be inflicted in a case of this kind without the sanction and approval of the courts.

Within fifteen days after the taking of testimony was concluded an exhaustive brief of the law was filed with the Commission in the hope that the third effort to get them to make an order affecting the car lines' charges, so that the eternal agitation, which was being fanned into a prairie fire and arousing public opinion, could be stilled. But with what result?

I will only read that part of the opinion which applies to my remarks:

While, however, we are of the opinion that a wrong exists here, it is doubtful what remedy this Commission can or should apply. It is possible that an order to cease and desist from these exclusive contracts, so long as the rates for refrigeration are exorbitant, might be enforcible.

Here I will say that with all the emphasis we possessed we urged the Commission in that argument to make an order, so that we might go into the courts and determine where we stood. The opinion continues:

The Michigan Central Company intimated upon trial that if such an order were to be made that company would comply with it, but in that case at the beginning of the present fruit-shipping season that company would be left without an adequate supply of cars, and we have expressed an opinion that many, perhaps a majority, of the fruit growers of Michigan are better off under the present arrangement with an adequate supply of refrigerators than they were under the arrangement when cars were not obtainable. * * *

But no general order of this kind could now be made, for we have not examined in detail these refrigeration charges, except to three or four destinations. It seems probable that the rate of transportation might properly be reduced, since the railway, by the making of these contracts, compels the company to pay the car lines company for a portion of the service which it formerly rendered and which it now escapes. But here again we have before us no particular rate and can, therefore, make no specific order.

This is the gist of it, because it was not complied with within the time, as we would have been very glad to see if we could again still the public agitation.

This matter can be much better dealt with by the car-lines company and the railway companies than by the Commission, and it has been thought best, this being a general investigation—

I want you to bear this in mind—a general investigation—because later I want to quote what the Commission said with respect to general investigations, that they never were held with the idea of doing anything except to get information.

This being a general investigation, to leave the matter open during the present shipping season. If by the first of next October—

Which, of course, would take it beyond the fruit-shipping season of 1904.

If, by the first of next October, these refrigeration charges have not been readjusted, the Commission will take further action in the matter, either in this proceeding or by some new proceeding.

Nothing was done by the car lines and the railroads on the suggestion of the Commission within the time named, October 1st. The fruit-shipping season having been over for that year, and, as there would be no other season until August, 1905, which is yet three months away, the matter was left in abeyance until February or March of this year, when several conferences were had and a reduction was tentatively agreed on and the Commission was unofficially notified that a reduction would be made and go into effect prior to the coming shipping season. About the middle of April the Commission issued an order for a further hearing to be held in Chicago on May 9. In the meantime the railroads and the car lines had concluded their negotiations and agreed upon a reduction of from 15 to 30 per cent. Immediately after this order for a further hearing was issued I came to Washington, saw the full Commission in chambers,

stated that a reduction in the rates in accordance with their recommendations had been agreed upon, and that the reduction ranged from 15 to 25 per cent, and asked the Commission to rescind its order for a further hearing, and if they still thought that the reduction was not substantial, that it make an order based upon the previous hearing and their finding, and pointed out also that the league of commission merchants, so prominent in these hearings, had, through its official organ, the Fruitmen's Guide, over the signature of the chairman, Mr. Meade, protested against a further hearing.

At the opening of the session on May 9 the statement was again made to the Commission by counsel for the Pere Marquette that a reduction of the refrigeration charges, ranging from 15 to 30 per cent, had been agreed upon, the reductions were shown to the Commission, a statement made upon information that no complaints had been filed with the Commission, informal complaints or any others, since the hearing in June, last year, and a motion made that the hearing be indefinitely postponed on the reductions that had been made and await developments as to whether the growers and shippers would be heard to complain. The Armour Car Lines made a motion that the Commission, if it were not satisfied with what had been done, should make an order based upon the finding of the Commission, after the June hearing, as to the rates from Michigan to Boston, Chicago, Duluth, Dubuque, and St. Paul, and other points where the Commission said the rates were exorbitant, and that the further hearing be suspended pending a settlement of the question by the courts.

I desire, if the committee will bear with me, to read from the record with respect to this motion.

Speaking of the motion to make an order upon their finding that the rate to these points were exorbitant, I said:

That is the position we have consistently taken before this body since 1901, but the question has never yet been met or decided. Personally, I would prefer that this Commission make its order, because it is a question raised in good faith and one that we would like to have the opportunity of testing in the courts. I observe that that is practically the position of these complainants here. In their official Fruit Journal, Mr. George F. Mead, a member of the committee which has this prosecution in charge, wrote this letter, dated April 8:

"I have written both Mr. Scales and Mr. Ayres to-day regarding the attitude to be taken by the car line committee on the reopening of the Michigan case in Chicago on May 9. I am more than half inclined to believe that Davies is about right when he claims that much of the fault lies with the Commission itself as well as with the railroads and private car lines."

What the Commission can expect to learn that they do not already know is more than I can imagine. It seems to me what we need now is action and not further hearings. * * *

Here is an official communication in the Fruit Trade Journal and Produce Record, under date of May 1, from which I read this extract:

The following statement is handed to the Fruit Trade Journal by the league's car lines committee and explains itself:

"The refrigerator car lines committee of the national league has been and is now of the opinion that the Interstate Commerce Commission erred in reopening the Michigan case of June, 1904, as all evidence necessary in that case has already been placed before the Commission, and the excessive cost of icing cars been fully established. Therefore a reopening was wholly unnecessary."

We argued further in support of the motion for an order to stop the hearing, that if it be true that the rates were excessive to Boston

and the points named, there is no difficulty about the Commission making an order as to those particular points, and the matter as to the other points could stand in abeyance until that question was tested. Quoting the precise words from the record, it continues:

Now, that is and has been the position of the Armour Car Lines, and we say, speaking for ourselves alone, that if you think you have the power or jurisdiction, make an order and permit us to have an opportunity of testing it.

We recited to the Commission again the reduction which had been made, the protest of the real complainants against a further hearing, and we said:

Therefore it seems to me that it is proper for the Commission to decide, first, will you accept the invitation of the prosecutors themselves and make the order on what you have got and permit us to test this matter, or will you consider this suggestion now as to easing the situation, which is the best these people can offer?

Well, the motion was denied and witnesses were called and practically the same ground that had been gone over in the previous hearing was gone over again, except, as the Commission said, the scope of the hearing was enlarged to cover other points.

I now want to go back still another hearing, which the Commission instituted of its own motion, entitled "In the matter of the transportation of freights by common carriers in cars not owned by said carriers." A hearing was ordered for October 10 of last year.

That hearing it was supposed it was concluded after a three days' session, during which the Armour Car Lines were again prominently brought to the fore. No order was ever made on that hearing, and it was supposed to have ended, but just before the last hearing, on May 9, in the Pere Marquette case, a subpœna was issued commanding Mr. Robbins to appear and be examined on May 10 in this case. The only witness called in this further hearing in the matter of transportation of freight by common carrier in cars not owned by said common carriers affecting the Armour Car Lines was the man Stryuckmans, whose testimony you have all heard about, Mr. Robbins not being called.

I want to read a page or two from the record, showing our protest on this hearing and the statement of the acting chairman of the Commission. This extract from the record shows our protest.

The chairman announced that this was not a case in which there were parties defendant. I said:

No; but it is a case where there was a general inquiry, and last October this was the final suggestion made by the Commission, "subject to such further inquiry as the Commission may think necessary to make in this case, if any, either by another order or by orders calling for certain data. The inquiry will be suspended now."

That was the suspension in October. I continued further:

Of course, it would be implied in that, if there was to be another hearing, we were to be given some opportunity in form of an order to be prepared to go on with it.

Then the chairman said:

Of course, it is not a case like where there are formal parties made—it is not a case in which it is intended to make an order. The Commission has never made an order formally on an inquiry for the purpose of getting information *for its* own use in respect to how far there may be abuses—violations of the *law—and I* think it would be difficult for us to say in advance just to define the *scope of* what inquiry would be made.

At last, after five different hearings, we are told by the chairman of the Commission that in hearings of this character, where they are ordered by the Commission for the purpose of finding out facts and obtaining information, that it does not undertake to use the testimony in cases of this sort as a basis for making a formal order under the law against particular carriers or parties defendant.

Is not the question pertinent, What has been the purpose, then, of the Commission in all these hearings, wherein the Armour car lines have been taken, so to speak, by the scruff of the neck and held up to public condemnation? Can it have been to create a public demand for legislation? Certainly that has been the result. Whatever may have been the motive, it is certain that the interests in which from fifteen to twenty million dollars are invested have been put in jeopardy, and we view with alarm the possibilities that may follow if Congress shall give to this Commission unrestricted power over this great industry, which has aided in building up the great fruit and berry industry of this country as it stands to-day.

In conclusion, I want to read just another extract from Judge Grosscup's address before the Union League Club on the private-car question. He said:

* * * The private car is a necessity of modern traffic. The private car, with its refrigerator accessories, is one of the most helpful and useful instruments of our present comfortable life. * * * It is that car that we are considering; but when the car and the traffic arrangement with the railroad, either for icing or mileage charges, is given such discriminating rates that it represents more than a fair return for the capital invested in the car and the deterioration of the car and the cost of the equipment, as where it amounts to three or four times in a single year the investment of the entire plant—that is only a rebate in disguise. But when we come to get at this question there are a thousand considerations entering into it. A hundred considerations that I can not stop even to refer to, such, for instance, as the returns for the firm that has a private car. One man gets a return because he keeps the wheels continually turning; his business permits it. But another man keeps the wheels turning only a quarter of the time; his business does not permit him to make any more use of the car than that. Are we to estimate it on the car that is always busy?

I do not believe we need much legislation. We have on our statute books already ample provision against rebates, except, perhaps, for some amendments in the matter of what is called the rights of men who ship on a large scale. For the men who ship on a small scale the rebates and provisions of the statutes are adequate.

I thank you, gentlemen, for your attention.

Senator FOSTER of Louisiana. Mr. Urion, do you object to placing your cars under the jurisdiction of the Commission, if they are not already there? Do you object to the private car companies being subjected to the same rules and regulations as public carriers?

Mr. URION. I would not want to answer that yes or no, but if I may be permitted to answer it, I will do so in this way: The attitude of the Commission seems to be, and it was stated, I think, in the hearing before this committee, that now the industry has been built up where it may be a profitable thing for the owner who furnishes the car and the refrigeration, that the railroads ought now to be compelled to do that, and the tendency is to extend the hand of paternalism to another corporation and to take away from the owner who has built up the business, who has borne the heat and burden of the day, with all the risks incident to building up a business of this kind, to let him step down and out; but we fear that if we are placed under

the Interstate Commerce Commission, as it is now, in the dual capacity with which it is empowered, that of seeking out and then indicting and afterward sitting as a judge, our business would suffer greatly.

Senator FOSTER of Louisiana. Would there be any greater danger to the private car companies than there is to all the railroad systems?

Mr. URION. Well, we feel that we have already been found guilty. I think I have said enough here to-day to show that the Commission first found us guilty and then proceeded to hear testimony, and they never have put us in a position where we could have any right of appeal.

Senator FOSTER of Louisiana. The position of your company is a denial of the jurisdiction of the Commission.

Mr. URION. No; it is not so broad as that. I do not know whether you were present in the earlier part of my remarks.

Senator FOSTER of Louisiana. No; I was absent. Do you admit that the Commission has jurisdiction over you?

Mr. URION. It may have jurisdiction over us.

Senator FOSTER of Louisiana. I am speaking of the attitude of your corporation. Do they admit or deny the jurisdiction of the Commission?

Mr. URION. We neither admit nor deny. This is the situation: If the service which the company renders, that of refrigeration, is one of the instrumentalities of carriage, then we are within the act.

Senator CULLOM. The truth about it is that neither one of you, neither the Armour Car Company nor the Interstate Commerce Commission, know whether you are under the law or not.

Mr. URION. No; and we have been trying to have that settled.

Senator FOSTER of Louisiana. That is what I am trying to get at. That is an unsettled question, you say. Now, have you any objection to Congress settling the question and putting you in the same category as a railroad corporation?

Mr. URION. Well, we would not know how far we could go on. If we were put under the Interstate Commerce Commission we would not know how much further we could go and develop the industry which we have developed or have been so very largely instrumental in developing up to the present time, because the Commission has expressed itself as believing that the private-car service ought to be eliminated entirely; and I fear that if we are put under the Interstate Commerce Commission the time is very near when our property will be confiscated; and when I say confiscated, I mean in the sense that the rates will be put down so low that we can not exist. The Commission has already expressed itself that the refrigeration ought to be done at the actual cost. Now, we could not last a week on that.

Senator FORAKER. I will forego the privilege of asking any questions.

Mr. URION. I have here a bunch of letters from growers and shippers in Michigan and in Georgia, and I should like permission to have them go into the record.

Senator FORAKER. Let them come in at this point.

The letters are as follows:

FORT VALLEY, GA., *May 5, 1905.*

Senator STEPHEN B. ELKINS,
Chairman Senate Committee on Interstate Commerce Commission, Washington, D. C.

DEAR SIR: I am informed that your committee has now under investigation the conduct and operation of what is known as private car lines. In view of the fact that this section is very much interested in all that pertains to the transportation of fruit, and as I am personally interested, being a grower, I deem it proper that I should give you my views, which probably represent the views of most of the growers in this section upon this question.

First, I think it absolutely necessary to the proper transportation of perishable fruits requiring refrigeration that this transportation be performed by private car lines, such as the Fruit Growers' Express.

The reasons are many and obvious why any particular railroad could not furnish equipment necessary in this business. The Fruit Growers' Express in operating their business last season at this point, from which point they handled 1,000 carloads of peaches and plums, gave, I think, very satisfactory service, as there were practically no complaints at the manner in which they handled the crop from this section.

It is also true that the service that they are giving now is much better than the service obtained when there were two or more independent bidders for this business. It seems that when the responsibilities of providing ice and cars is placed upon one line that they realize this and act accordingly, providing ahead. While I think that the time will come when cheaper transportation will be necessary in order to make the business profitable, up to now the growers have been able to pay the price charged by the car lines and the railroads and still make profit on the business.

I am not prepared to say whether the rates charged are entirely fair, nor can I say that they are unfair, as upon this question my information is not sufficient for me to base an opinion, but I wish to add that I think the Fruit Growers' Express have handled the crop in such a manner as to give general satisfaction.

Very respectfully,

LOUIS L. BROWN.

TRUST COMPANY OF GEORGIA,
Atlanta, Ga., May 15, 1905.

Hon. STEPHEN D. ELKINS,
Chairman Committee Interstate and Foreign Commerce, Washington, D. C.

DEAR SIR: Our attention has been called to the recent agitation in Congress regarding the private refrigerator car lines, and as owners of the controlling interest in the Atlanta Ice and Coal Company, of this city, and the Crystal Ice Company, of Chattanooga, Tenn., composing the largest ice manufacturing plants in the South, we are naturally interested in any legislation affecting the operation of private car lines, as a large percentage of our product is supplied to such companies. We understand your committee is now consid-

ering this question, with the view of ascertaining the facts governing the private car lines operations, and being closely identified with the fruit industry in this State, in that all the ice required at Atlanta, Chattanooga, Tenn., and Rome, Ga., is furnished through the companies above mentioned, for icing and reicing of refrigerator cars, we deem it proper that you should be given the benefit of our view of the situation in this territory.

Prior to our acquisition to these several ice plants they were in a very run-down condition, and the requirements of the fruit movement in refrigerator cars were such that it was necessary to practically rebuild them to enable us to contract to furnish all requirements.

We have invested very large sums of money in Atlanta and Chattanooga, and feel that any legislation tending to discourage the fruit industry, by creating lack of confidence in the transportation facilities, is injurious to our investments, as well as that of the many large growers.

Through the exclusive contracts now existing between the Armour Car Lines and railroads in this section, they are enabled to contract in advance for such ice as will be required for the entire movement. We do not believe that the railroad companies could profitably undertake to own sufficient equipment to meet the requirements and, in addition, we could not contract with the various roads for ice supply to the same advantage and with the same accuracy that we do under the plan of one company handling the entire business.

In connection with our plants, which have a combined daily capacity at Atlanta and Chattanooga of 500 tons, we have a refrigerated storage capacity of 13,000 tons.

In order to meet the demands of the fruit business, as well as local trade, we have to commence filling our storage rooms in February and March, and to-day, under notices from the car lines of their requirements, we have in storage 5,000 tons of ice, which would be a heavy loss to ourselves and the car lines should any disaster befall the fruit crop now developing for shipment in June, July, and August.

We refer to lack of confidence in the transportation facilities. By this we mean that we have grave doubts of the ability of the various railroads to invest sufficient money in owning refrigerator equipment to meet the growing demands. We believe that plan would block any developments of fruit growing in new territories where the railroads did not enjoy a fruit traffic, necessitating the ownership of refrigerator equipment.

Under the present plan in this State all sections, however remote, have equal opportunities to secure refrigerator service, and we believe the service now open to all sections has been the strongest factor in the development of this valuable industry in Georgia.

We should like to have had an opportunity of appearing in person before you, but find it impossible, so take this means of presenting our views.

Yours, very truly,

E. WOODRUFF, *President.*

FORT VALLEY, GA., *May 12, 1905.*

Senator STEPHEN B. ELKINS,
Washington, D. C.

DEAR SIR: I learn that your committee is now engaged in investigating the situation in reference to private car lines.

Being a grower of peaches of considerable experience, having been engaged in growing peaches for market for a number of years and being interested in anything that pertains to this industry, I write to inform you in reference to the transportation facilities furnished the growers in this section by the Fruit Growers Express.

Since the Fruit Growers Express has had exclusive control of the shipments from this place the service has been better than ever before and has been entirely satisfactory to myself and, so far as I know, to others growing fruit for market.

I think that the rates charged are reasonable for the service furnished, and that so far as the facilities here are concerned they are entirely satisfactory as at present furnished.

I trust that your committee will not see fit to make any change in the business here.

Very truly, yours,

R. S. BRASWELL.

THE MACON ICE DELIVERY COMPANY,
Macon, Ga., May 11, 1905.

Hon. STEPHEN B. ELKINS,
Chairman Committee Interstate and Foreign Commerce,
Washington, D. C.

DEAR SIR: We have noticed considerable agitation in reference to the operation of private-car lines, in which our business interests are largely interested in the transportation and icing of fruit cars. We are the largest ice manufacturers in the South, and are located with our different plants in the center of the fruit industry, and should this investigation as to the ownership of car lines and the way in which they should be operated prove detrimental to the interests of the ice manufacturers and the fruit growers, would cause considerable loss to us.

We have been handling the ice situation for the supplying of the fruit refrigeration for the past fifteen years very satisfactorily to both the operator of the car lines and ourselves as manufacturers.

Prior to 1898 there were operating in this section from three to six different refrigerator lines, which was very unsatisfactory to the ice manufacturers, also to the fruit shippers. These different lines had a limited number of cars, and, as the fruit industry progressed, the refrigerator lines were unable to meet their demands. About 1898 the Armour Car Line entered this territory, and their facilities having proved adequate and service satisfactory, they became quite a factor in this line, and since that time they have arranged with the fruit growers and the ice manufacturers to handle the fruit industry exclusively.

Again, this business is increasing wonderfully, and is about six times the volume now that it was at that time, consequently it calls for larger supply of ice and increase of facilities for the manufacture

of same. Having contracted with Armour for a specific amount for this purpose, we accordingly erected two of the largest ice plants in the entire South. The Armour Car Lines contract with us each year for a specific amount for supplying the fruit business in Georgia and Florida, and for this reason we are in position to know about how much ice to manufacture and store for this purpose, having a guaranteed amount to be taken by the car lines. We consider this information very valuable to the manufacturers, and through the business-like methods of the car lines we were in a position to make contracts and guarantee supplying all of the ice necessary to refrigerate the fruit in this section.

Our main object in writing you about the car line is with the hope that the committee will not disturb the present situation, as it may cause considerable loss to the ice manufacturers as well as to the fruit growers. The encouraging of the fruit industry we consider partly due to the prompt service of the car lines and the ability of the ice manufacturers to supply the ice.

We believe that this business is in its infancy in the South, and no obstacles should be put in the way of the growth, raising, and refrigeration of the fruit for shipping purposes.

We further beg to state that our investment in the manufacture of ice represents over half a million dollars, and for this reason you can readily understand why we are so eagerly interested in this movement.

We trust that we have made ourselves plain on this subject, and should you desire to communicate with us on any question we will cheerfully furnish you the desired information requested.

Thanking you in advance, we are,

Yours, very respectfully,

THE MACON ICE DELIVERY COMPANY,
N. M. BLOCK, *President.*

ALLEGAN, MICH., *November 6, 1903.*

FRUIT GROWERS EXPRESS,
Grand Rapids, Mich.

GENTLEMEN: I see in one of the local papers stating that the Armour car service was robbing fruit growers in high rates of icing. I do not know how we could get along without their service.

In 1902 and 1903, as a small buyer, I used 74 Armour refrigerator cars in shipping peaches to eastern markets. Their service has been first class in every respect. At Fennville this season I loaded 45 cars, and had their representative's (Mr. Woodward's) service in keeping cars iced, and which he did in first-class shape. No shipper's wants went unattended if work, night and day, would help them to cars, and found him a gentleman in every respect.

Hoping I will have to use a great many Armour cars next season, allow me to thank you for your A 1 service that I have received.

I beg to remain, yours, truly,

F. M. JOHNSON.

LUDINGTON FRUIT COMPANY,
Ludington, Mich., October 5, 1904.

ARMOUR CAR LINE, *Chicago, Ill.*

DEAR SIR: Our car shipping has closed for this year. We have sent out some 23 cars, more than any previous year. We have had prompt and courteous service from your Mr. Geeslin, and are pleased to express our satisfaction with his dealings in every way.

Trusting we may have the pleasure of meeting him another year, we are,

Very truly, yours,

L. F. Co.,
H. T. BLODGETT, *Manager.*

BRUNSWICK, MICH., *October 1, 1902.*

FRUIT GROWERS EXPRESS, *Chicago, Ill.*

GENTLEMEN: As a great deal has been said in regard to the icing charges of your company, we feel as though we should speak a word for the excellent service we have had.

Your line of refrigerators placed at our command has enabled us to pay the grower a good price for his fruit.

A word of explanation here may be of benefit to you. This loading station is simply a crossroads, and, while we have warehouses, we are not prepared to place anything under ice until we get a car, and, of course, it is impossible for anyone to tell just how much fruit is coming. And if on the afternoon of some hot day we receive 4 cars of fruit and only 2 cars to put it in, what would we do without plenty of reserve cars to fall back on? Now, to the point; if we did not know, we could step to the phone and call for any number cars we wanted and have them on the first train, we would surely have to cut the price to the grower.

Therefore, we say success to the Fruit Growers Express.

Yours,

CARBINE & SKEELS.
Per E. T. CARBINE.

CHICAGO, ILL., *October 5, 1904.*

H. M. MEAD,
(Agent Amour car lines.)
Benton Harbor, Mich.

DEAR SIR: I am leaving this afternoon rather unexpected and without time to call upon you, and therefore take this opportunity of bidding you good-bye and thanking you for the courtesy and good treatment extended me personally, and also wish to thank you for the most perfect and prompt service in furnishing us with F. G. E. refrigerator cars, which we have had the pleasure of using this season without a single loss or complaint.

Again thanking you for your many favors, and trusting that the writer, J. A. Shea, may have the pleasure of meeting you in the Michigan peach belt another season, I remain,

Yours, respectfully,

J. A. SHEA.

NEW ERA, MICH., *October 1, 1903.*

FRUIT GROWERS EXPRESS COMPANY,
Chicago, Ill.

GENTLEMEN: I wish to express to you my complete satisfaction in regard to the refrigerator-car service we have received this season. We have used 31 of your cars for peaches, and in every instance we have received the cars just when we ordered them, and the fruit has always arrived in fine condition, showing that the cars were well looked after while in transit. We consign most of our fruit to eastern markets, and last season as well as this we received no complaints whatever, while every year before we would lose several cars of fruit outright on account of poor cars and neglect on the part of the railway company to keep them iced. We consider the price we have to pay for the cars a small item in comparison to the service we receive, and sincerely hope you will continue to operate your cars on this line.

Very truly, yours,

J. B. CONGER.

HART CEDAR AND LUMBER COMPANY,
Hart, Mich., October 16, 1903.

FRUIT GROWERS EXPRESS,
Chicago, Ill.

GENTLEMEN: I notice that some of the Chicago papers have criticised your company in some of your business methods. In doing so I feel that they have done you an injustice, at least so far as I am able to judge from my own business relations with you and from observations. In previous years we shippers have been unable to get cars suitable for fruit shipment, and when we did the majority of them were so poorly iced that fruit reached its destination in a badly spoiled condition. They may have been a little cheaper than yours at the time, but much more expensive in the end.

Your company have supplied cars at once when wanted, and they always carried the fruit to its destination in first-class condition.

I am, yours, very truly,

J. K. FLOOD.

THE WM. M. FISHER & SONS CO.,
Grand Rapids, Mich., October 9, 1903.

The FRUIT GROWERS EXPRESS COMPANY,
Grand Rapids, Mich.

GENTLEMEN: I wish to thank your company, and especially your agent, Mr. F. E. Walcott, for the valuable services rendered me during the peach season, and can not speak too highly of your cars. Your cars have been sent to our loading stations promptly, well iced, and had it not been for these cars would have had to discontinue shipments in the heaviest part of the season on account of the poor time the railroad companies were making, and no doubt the other shippers were in the same way. The service given by the railroad company was very discouraging to the shippers this season, and had it not been for the fine quality of your cars they would have had to discontinue shipments and either sold their fruit close home or let it perish, and

it probably would have been the latter, as the home market was nearly always overstocked.

For your information I will mention a case where we shipped a car of peaches and a car of potatoes from Grand Rapids, both on Thursday. The car of potatoes arrived at Columbus Sunday, a. m., and the peaches not until Monday about noon, and the rate is over double on peaches.

We have shipped close around 200 cars this season, and in nearly every instance, and where the cars have been delayed, the fruit has arrived in good condition, and as we expect to be in the peach deal again next season, we assure you that we can not get along without your cars, and if they were taken from this section would discontinue shipments.

Thanking you again for your valuable services, and wishing you continued success, I am,

Very truly, yours, WM. M. FISHER.

MICHIGAN STATE HORTICULTURAL SOCIETY,
Shelby, Mich., October 7, 1903.

FRUIT GROWERS EXPRESS COMPANY,
Chicago, Ill.

GENTLEMEN: Mr. H. J. Hark asked me to write you a letter stating my grievances and appreciation of your car service. Of the former I have none, but I can say that I fully appreciate the service you have given me in the way of keeping us supplied with cars and the prompt attention you have given to shipments, and hope we may have a continuation of your car service in the shipment of fruit another year.

Very truly, yours,

C. F. HALE.

FENNVILLE, MICH., *October 7, 1903.*

FRUIT GROWERS EXPRESS,
Grand Rapids, Mich.

GENTLEMEN: I beg to say that the Fruit Growers Express have given complete satisfaction this season. My business has been given the best of attention. Iced cars have been placed promptly when ordered and kept well iced, and am satisfied shipments have been carefully cared for while in transit. Without this service, am satisfied we would not have been so well cared for had we been obliged to depend upon system or line cars of insufficient ice capacity. From the standpoint of a large shipper on the Pere Marquette and other railroads in Michigan, think the present arrangement entered into between the various Michigan railroads and the Fruit Growers Express is for the best interest of all fruit shippers, not only from a car standpoint, but also the attention and service which goes with it.

I wish to add that Mr. J. M. Woodward, representing the Fruit Growers Express at Fennville this season, has rendered his company good service and has done everything possible to take good care of all shippers.

Yours, truly, CHAS. OWENS.

MATTAWAN, MICH., *September 30, 1903.*

We, the undersigned fruit growers and shippers of Mattawan, Mich., hereby certify that we have received good service from the Fruit Growers Express Company, cars being kept clean and well iced.

B. E. WHEELER.
W. C. MOSIER.
D. O. RIX.
GEO. PUGSLEY.
G. W. YOUNG.
E. L. HEATH.
W. H. MILLER.
A. L. WOOD.

FREMONT, MICH., *September 29, 1903.*

ARMOUR CAR LINES, *Chicago, Ill.*

GENTLEMEN: I wish to express my appreciation to you for the excellent car service that you have rendered us here this season. Cars have always arrived here on time when ordered and always well iced. I wish to make the suggestion that you establish an icing station next year, either here or at White Cloud, as at least a day's time is lost by having my cars go via Grand Rapids. If there was an icing station here they could go direct to Port Huron via Baldwin. Kindly consider this.

Respectfully, yours,

W. H. BLODGET, JR.,
With W. H. Blodget Co., Boston, Mass., Worcester, Mass.

HART, MICH., *September 28, 1903.*

FRUIT GROWERS EXPRESS, *Chicago, Ill.*

GENTLEMEN: We are more than satisfied with the way you have handled our fruit from Hart station, and we want you to stay with us during the apple and potato season, and also we want you to come back next season and handle our berries, cherries, peaches, and plums. With your services we have been able to induce buyers to come and buy our fruit and produce, and get much more than we could get by the old way. We want you to stay right with us. I have had a large amount of fruit of my own to handle, and your express has been a great help to me.

I am, etc.,

T. S. GURNEY.

SHELBY, MICH., *September 28, 1903.*

FRUIT GROWERS EXPRESS, *Chicago, Ill.*

GENTLEMEN: Now that the fruit business is ended for this season, we wish to say that your service has been very satisfactory in every detail.

The only loss that we had from fruit "going down" was when we tried to avoid the icing charges by shipping across the lake to meet

an iced car on other side. We are convinced that the service you have given us is the best manner of handling fruit, and that the same arrangement can be made next season.

When you first began operating here and the proposition appeared to be coercive, the writer did not consider it quite the right treatment, but to-day am only too willing to express my appreciation of the matter in every detail.

Thanking you for past favors, and hoping to see you in field next season, I am,

Very truly, yours,

F. E. LEWELLYN.

SEPTEMBER 28, 1903.

FRUIT GROWER: EXPRESS, *Benton Harbor.*

DEAR SIRS: I have used a great number of your cars this season and they have carried well. I have no complaint to make against your service; it has proven satisfactory, and think a good move to have your cars, as it assures shippers of equipment.

Yours, truly,

T. B. SULLIVAN.

BAILEY, MICH., *September 26, 1903.*

The FRUIT GROWERS EXPRESS,
Chicago, Ill.:

This is to certify that I have used 16 of your iced cars this season for shipping peaches, and that all have been well iced, clean, and satisfactory, and have been well pleased with the service, and also with the courtesy extended by your company.

H. BARNUM.

LOWELL, MICH., *September 26, 1903.*

FRUIT GROWERS EXPRESS,
Grand Rapids, Mich.

GENTLEMEN: We wish to say that the refrigeration service here, through the efficient services of your agent, Mr. J. R. King, has been very satisfactory this year, and it is our earnest request that you place the same man in this territory again next season, if possible.

Thanking you for this favor, we remain,

Yours, truly,

LOVELAND & HINYAN.

LOWELL, MICH., *September 26, 1903.*

FRUIT GROWERS EXPRESS,
Grand Rapids, Mich.

GENTLEMEN: We are well pleased with the refrigeration service that has been furnished at this point this season.

Yours, truly,

THOMAS & GILES.

SHELBY, MICH., *September 25, 1903.*

FRUIT GROWERS EXPRESS,
Chicago, Ill.

GENTLEMEN: I beg to advise you that your service has given us entire satisfaction during the past season. It has enabled us to get in outside buyers for our fruit, they, knowing that their interest will be protected. We are able with your cars to reach any market and feel they will have proper attention through to destination, and hope we will be able to enjoy your service another season.

Yours, truly,

I. W. LOOMIS.

SARANAC, MICH., *September 25, 1903.*

FRUIT GROWERS EXPRESS,
Grand Rapids, Mich.

GENTLEMEN: I am well pleased with the refrigerator service that I have received this season. It is a vast improvement on what we have had in the past.

Yours, truly,

S. E. TUCKER.

ST. JOSEPH, MICH., *September 25, 1903.*

FRUIT GROWERS EXPRESS.

GENTLEMEN: I wish to compliment you for your splendid service given to our firm in Michigan this season. I beg to mention especially the prompt and active service rendered us by your Mr. J. M. Woodward, at Fennville, Mich., which I can assure you was appreciated very much by myself and the firm I represent. Thanking you very much for same,

Yours, truly,

ANGELO DESCALZI,
Representing Descalzi Fruit Co., Pittsburg., Pa.

SHELBY, MICH., *September 24, 1903.*

The FRUIT GROWERS EXPRESS COMPANY,
Chicago.

GENTLEMEN: We wish to express our satisfaction with the car and refrigerator service given us by your company during the season just drawing to a close. At no time have we suffered for lack of transportation, and we have been enabled, by your service, to put our fruit into any market that we thought desirable, which we think is very much to our advantage.

Yours, very truly,

WYLIE BROS.

LUDINGTON FRUIT COMPANY,
Ludington, Mich., September 24, 1903.

FRUIT GROWERS EXPRESS,
Grand Rapids, Mich.:

This is to certify that the service given us during the present season has been entirely satisfactory, and we appreciate the attention given us by your representative at this point.

LUDINGTON FRUIT CO.,
SMITH HAWLEY, *Secretary.*

FREMONT, MICH., *September 30, 1903.*

FRUIT GROWERS EXPRESS, *Chicago, Ill.*

GENTLEMEN: In regard to your service we are very well satisfied, and has been a great benefit to the fruit trade. We have had the best of service in every respect.

Yours, truly, W. F. HILLYARD & SON.

REEMAN, MICH., *September 30, 1903.*

FRUIT GROWERS EXPRESS.

GENTLEMEN: Your car service has been excellent. We received cars regularly and have been well iced. Thanking you for past favors, we remain,

Yours, truly, BOYD BROS.,
Reeman, Mich.

FENNVILLE, MICH., *October 8, 1903.*

FRUIT GROWERS EXPRESS, *Grand Rapids, Mich.*

GENTLEMEN: I have shipped from Fennville to Indianapolis, Ind., this season 30 cars of peaches, and the service has proven satisfactory in all respects at loading station.

J. H. KARNS,
Buyer for E. F. Shedeler & Co., Indianapolis, Ind.

LUDINGTON, MICH., *September 24, 1903.*

ARMOUR CAR LINES, *Chicago, Ill.*

GENTLEMEN: As the present fruit season is about over, I desire to thank you for the excellent service and many courtesies extended me by your company and its different representatives at different shipping centers, both North and South, in the United States. You are perhaps familiar with the fact that this season is not my first experiment with your cars, for I have used them for fruit shipments for several seasons, whenever they were available.

Being thoroughly familiar with the system in which you operate your cars, it seems to me that the service now being given to shippers throughout the country could not be improved upon. When a ship-

ment is moving in your cars it gives to the shipper a feeling of confidence that he never enjoyed previous to the adoption of your cars by the various railroads. During the present Michigan fruit season I have handled more than 80 per cent of the peaches leaving Ludington and vicinity, and up to the present time I have no complaint whatever to offer.

During the past month I have shipped cars to North Dakota, Wyoming, Minnesota, Wisconsin, New Hampshire, Vermont, Massachusetts, Ohio, and Michigan. I trust that the time is not far distant when a shipper will be able to avail himself of the use of your cars and service from every part of the country.

Yours, truly, A. T. HARMON.

FREMONT, MICH., *September 23, 1903.*

FRUIT GROWERS EXPRESS, *Chicago, Ill.*

GENTLEMEN: Beg to advise you that I have been much pleased with the service you have given us the past season in furnishing us cars properly iced and in placing them at the proper time where needed. Hoping you will serve us in the future as well as in the past, I beg to remain,

Yours, respectfully, F. D. SHERMAN.

FREMONT, MICH., *September 23, 1903.*

FRUIT GROWERS EXPRESS, *Chicago, Ill.*

GENTLEMEN: Beg to advise you we are well pleased with the services your line has been giving us the past peach season. No complaint to make. Cars that have been on the road eight days have arrived in good condition. All that we ask is that you keep us supplied with your refrigerator cars, as you have always done heretofore; and your agent, Mr. Hark, has been very courteous and obliging.

Yours, very truly,

E. L. BOYD.
M. B.

CASNOVIA, MICH., *September 23, 1903.*

ARMOUR REFRIGERATOR CAR LINE, *Chicago, Ill.*

GENTLEMEN: I have loaded at this point this season 50 cars fruit in your cars. I am well satisfied with the service and know that no other company can handle the fruit crop of Michigan with as good results to shipper and grower as the A. R. C. L.

Hoping that we may always have as good treatment both from company and employees,

I remain, yours, very truly, W. L. STONE.

Mr URION. I want to explain that many of these letters are dated back in 1903, and were brought out after the first attacks made on us in the newspapers.

STATEMENT OF E. M. FERGUSON.

Senator KEAN. Please state your residence.

Mr. FERGUSON. I live in Minnesota, and I appear for the Western Fruit Jobbers' Association.

Senator KEAN. What is your business?

Mr. FERGUSON. Wholesale fruit dealer and president of the Western Fruit Jobbers' Association, the organization for which I appear here particularly.

Senator KEAN. We have already had a statement from you. You have already appeared several times before the committee.

Mr. FERGUSON. Yes, sir.

Senator KEAN. At the last session of Congress.

Mr. FERGUSON. Yes, sir.

Senator KEAN. And you desire now to supplement your statement that you made before?

Mr. FERGUSON. Yes, sir.

Senator KEAN. You may proceed.

Mr. FERGUSON. Mr. Urion has referred to the amount of time consumed by me at a former hearing before this committee, and I appreciate fully that I did, at that time, consume a great deal of the time of this committee; but I want to call attention to the fact that the organization and the interests for which I appeared produced no other witness than myself, and I think the total amount of time consumed by me did not exceed, if it equaled, the aggregate of time consumed by the different witnesses produced by the car lines. I do not intend at this time to introduce any new evidence or testimony. I am perfectly willing to submit our case upon the testimony already of record, believing as I do that we have fully established our case. If we have failed in any particular in that line, Mr. Robbins kindly came to our assistance. I think it is conceded that there is a great transportation evil existing in the nature of private car line practices, an evil that requires the attention of Congress, and I think it needs no further argument on my part or the introduction of any more testimony to convince this committee of the existence of that evil. My remarks will be brief, but I will ask the privilege of filing with the committee a written statement, a résumé of the testimony already introduced, and will yield my time to Judge Roger S. Powell, of Duluth, an attorney who appears here for the Western Fruit Jobbers' Association.

Senator CULLOM. When can you furnish your written statement?

Mr. FERGUSON. To-morrow morning, I think. If it is the desire of the committee to cross-examine me in any particular, I shall be very pleased to be cross-examined upon any statements of mine.

Senator FORAKER. You can hand in your statement in the morning.

ALLEGED HAZARDS.

Mr. FERGUSON. The Armour witnesses made much ado about the large amount of claims that they have to pay. The fruit dealers and shippers are skeptical on this point, and it would surprise them very much to find a verification of these statements, as it goes contrary to their individual experiences. They are like the gentleman from

Missouri; they would like to be "shown," and to be shown by the receipts of payment, of which there is a total absence in the record.

SECRET CONTRACTS.

Armour's denial of the covert way in which these contracts are made and their practices are kept from the general public, and as far as possible from the trade, is emphatic, but the proofs cited are against them. Of course, where an Armour contract is secured, dealers at once feel it in advanced icing charges, and soon learn by paying these advanced charges enough to put them upon inquiry. But the fact remains that Armour Car Lines keep these contracts as much under cover as possible. They cite the filing of the Pere Marquette contract with the Interstate Commerce Commission as proof that the contracts are not kept secret. The fact about that is that this contract was filed with the Commission by the Pere Marquette Railroad in a case before the Commission and in obedience to an order of the Commission directing the Pere Marquette Railroad to come before the Commission and disclose its contract with the Armour Car Lines. It was in every sense of the word a compulsory, and not voluntary, disclosure.

ARRAIGNS COMMISSION.

Mr. Urion's statements and arguments were, in large measure, devoted to an arraignment of the Interstate Commerce Commission for not making a definite order against them in the Michigan Fruit Case, but in Armour Car Lines' answer before the Commission in that case and all through the case it was claimed by them that the Interstate Commerce Commission had no jurisdiction over Armour Car Lines, because they were not, and are not, common carriers—a contention with which I agree—but from Armour Car Lines' standpoint they make a case of "blowing hot and cold" in the same breath.

SHIFTING OF RESPONSIBILITY.

Armour's witnesses deprecate this agitation as interfering with their business and jeopardizing their capital, and undertake to lay the blame for their failure to supply cars in the North Carolina berry region to that cause. But in the same breath we find them explaining their present offer, made to the Interstate Commerce Commission and to the complaining shippers (which offer was rejected), to reduce their exorbitant icing charges in that territory by saying that they are now getting the business better in hand and can afford the reduction.

MIDDLEMEN.

Car line witnesses and its attorney have with so much emphasis declared and declared again the complainants in this controversy to be only "middlemen," "agitators," who had no real interest in the matter and who bore none of the burdens of the Armour monopoly.

If the statements were true, it would indeed be difficult to explain the impelling motive that brought together, irrespective of business jealousies and keen rivalry among themselves, almost the entire

wholesale fruit dealers of the Middle West in this common defense, pledged as they are, each unto the other, to continue this effort for relief from the Armour monopoly until success shall have crowned their efforts. They know they have right on their side and it will prevail. If we fail this year we shall try again next year and so continue.

This statement explains the $10,000 fund of the Western Fruit Jobbers' Association mentioned by Mr. Urion.

As to the statement that the more than 125 wholesale fruit firms that I represent are not shippers or interested parties, I hope I may be pardoned for again denying the truth of the statement, and adding that the statement is willfully and maliciously false, as is well known by car line witnesses. The wholesale firms that I represent buy largely the products they deal in, outright, at the various producing points, paying cash for same, and paying all freight and refrigerating charges. Frequently these products, on account of faulty refrigeration or other causes, arrive at destination in badly damaged condition, resulting in heavy losses to the dealer. If, as stated, Armours pay loss claims arising from faulty refrigeration, the interests that I represent have no knowledge of it.

It must be remembered that the perishable nature of the commodities we handle compels prompt sale of same on arrival at prices governed by quality of fruit and local market conditions, irrespective of cost. We can not follow the simple plan that it is alleged we do of adding transportation charges to cost of commodities, fixing selling price enough higher to allow us a profit on the transaction. Such a plan will not work out in practice in the fruit business. If the fruit is under grade or the market overstocked—weather unfavorable—the question then is, What will the fruit sell for? not what it cost. Losses, from a few dollars per car to several hundred dollars per car, is not an uncommon experience.

WHICH IS RIGHT?

In one breath Mr. Urion, Armour Car Lines attorney, declares complainants to be "commission men" who do not buy and ship; the next moment he as solemnly declares that we are only in this fight because Armours have taken all the commission business away from us, compelling us to buy outright the commodities in which we deal. And such is a fair sample of their entire defense.

NORTHERN PACIFIC ICING SERVICE.

R. P. Ober, general agent of the Northern Pacific Refrigerator Car Line, testified before the Commission on May 11 that the Northern Pacific Railroad Company kept an icing foreman at each of their icing stations, under whose directions the section men at work on the road performed the work of icing cars, and he testified unqualifiedly that their refrigeration equipment and service were efficient and complete and second to none in the country. This was so well known by Armour's attorneys that they made no pretense of disputing it by cross-examination or otherwise. The Northern Pacific performs this service for its patrons along the line of its road and also performs it

for Armour Car Lines for every car of theirs that comes to it over connecting lines or originates upon the Northern Pacific line, and there is not an Armour Car Line employee or an Armour icing station along the whole line of that road.

ECONOMIES IN OPERATION.

Privately owned refrigerator cars do not insure against burning of icing stations nor against the loss incident to failure of crops, and these hazards are incident to the business and must be provided for independently of where the ownership of the refrigerator cars may lie or by whom the service of refrigeration may be performed. I allude to this self-evident proposition because Mr. Robbins seems to find in these considerations a warrant for the existence of the car lines.

DISCRIMINATION.

The car line practices are a discrimination against and a burden upon the traffic of the dealers in perishable products, and they stand alone in it. I am not a lawyer, but I do not think that this burden and this discrimination is consistent with or complies with the Constitution of the United States, which insures to every person equal protection under the law in his person and property. In the light of past experience as to admitted evasions and violations of existing carrier laws by certain common carriers and by these private car lines, I want to go on record in saying that in my judgment the only way to successfully legislate against these private car line practices is to eliminate the private freight car, and that any legislation short of this, or legislation designed to continue the privately owned refrigerator car will place in the hands of the great car line systems an effective means of receiving and compiling information concerning the entire movement of commerce from the various different highways, and that no law or prohibitions that may be thrown around the carrier can prevent such a result.

AS TO PUBLISHING ARMOUR CHARGES.

Mr. Robbins states that there is nothing "secret or private about their tariffs." I have already given my experience in vain efforts to acquire information about these refrigeration charges. Mr. Robbins further advises that had I "applied" to them I would have been furnished promptly with the information. It may be well to stop and inquire why I should look to Armour & Co. for such rates, inasmuch as they do not claim to be common carriers and, as Mr. Robbins admits, they do not publish and file their tariffs with the Interstate Commerce Commission.

My experience has been and still is that while it is in some cases possible to obtain this information with respect to shipments originating at large and well-known shipping centers, it is difficult and almost impossible to obtain information with respect to these charges from other points. In this connection I wish to recite a recent experience of C. C. Emerson, a wholesale fruit and produce merchant of St. Paul, which was given to me by him. About the 1st of May

Mr. Emerson desired to purchase cabbage in the Mobile, Ala., market for shipment to St. Paul, Minn. He ascertained the market value of the cabbage at Mobile and then applied to three different railroads in St. Paul for information concerning transportation rates under refrigeration. All the roads promptly furnished information concerning the freight rate itself. None were able to reply concerning refrigeration. At the expiration of the second day one of the companies quoted a refrigeration rate of $55 per car in addition to the freight rate from Mobile to St. Paul. At the time of my interview with Mr. Emerson, it being about a week after he had sought the information and after the arrival of the car in St. Paul, the other two roads of which information had been requested had not been able to furnish it. The $55 quotation was supposed to be the Armour tariff rate, but when the car of cabbage arrived it was found to be loaded in an Illinois Central car and to have originated in free territory not controlled by the Armour monopoly, and the icing charges, in place of being $55, were $32. I offer this as an illustration of the impossibility of securing definite information with respect to these charges and to illustrate the difficulties under which dealers in perishable commodities are laboring. It must be manifest to all that in order to successfully do business in these days of keen competition a dealer must have some knowledge of the cost of goods before purchasing same.

REDUCTION OF ARMOUR REFRIGERATOR CHARGES.

Much has been said by Mr. Robbins in this respect. I do not wish, however, to discuss all of Mr. Robbins's relatively nonimportant statements, but in a general way I call attention to his contradictory statements. I will admit that in some instances Armour refrigerator charges have been lowered from what Armour's refrigerating charges were several years ago, such instances being at points where refrigeration has always been performed by either Armour Car Lines or some privately owned cars, and may be likened unto freight rates twenty years ago compared with present rates. In no instance, however—and I challenge the car lines to point out the contrary—have the car lines lowered the refrigerator charges below what they were when the carriers themselves performed these services, but, on the contrary, in all such instances where the duty of performing the icing services has been transferred from the carrier to the car lines, I repeat that the charges have been advanced from 300 to 500 per cent.

SHIPPING ADVICE.

Mr. Robbins, referring to the statement made before the committee to the effect that Armour Car Lines would be advised of other shipments, so that Armour could run his cars in ahead of the other shippers' cars, and thereby prevent the selling of his fruit, stated: "That is absolutely false and untrue. We have no advice as to anybody else's car. As to our own cars, we need to know the destination en route to attend to the icing, but our own produce department never knows of that information." In this connection it must be apparent to any man that wherever these Armour contracts obtain the other shippers' products are carried in Armour's cars, and

in knowing and learning, as they must, the destination of the car it carries with it the knowledge of the car's contents, and though the information may be necessary for icing en route it is also available for the purposes of trade, and if, as stated, such information is only desired by the Armour Car Lines to enable it to properly look after the icing en route, why, then, in their printed circular instructions to agents, under date of April 1, 1905, should there appear the following:

"F. G. E. cars may be used for other than refrigerated products under ventilation, but when so used railroad agents must inform the F. G. E. Company by postal card as to car number, date of loading, destination, contents, and a manifest of car."

"F. G. E." stands for Fruit Growers' Express and "Fruit Growers' Express" stands as the trade name for Armour Car Lines cars. I read these instructions from a circular, which was brought to my attention at one of the local stations of the St. Louis and San Francisco Railroad very recently. There is no icing to be done on shipments under ventilation. In the hope of being able to offer a copy of this circular to this committee, I, about May 1, applied by letter to the general freight agent of the Frisco System, at St. Louis, to furnish me copies of the freight and refrigeration tariffs from Frisco points to my market, and, in addition thereto, this particular circular, which contains general instructions to agents with reference to the refrigerating service. In reply I received a copy of the freight and refrigerating tariffs, but no copy of this circular and no accompanying letter explaining failure to furnish.

MATTER OF PRIVATE CARS.

Mr. Robbins, in his statement before the House committee, quotes from the testimony of Mr. W. C. Rowley, general freight agent of the Michigan Central Railroad Company, to show the difficulty of the carriers providing themselves with refrigerator cars; and in answer to a question by Commissioner Prouty as to whether or not, in his judgment, without a contract with the Armour Car Lines they would have difficulty in supplying the Michigan shippers, Mr. Rowley answered, "We consider it would be impossible." The Michigan Central, prior to 1903, had performed this service for its patrons and has recently announced through the press, and on May 10, 1905, so announced to the Interstate Commerce Commission at a hearing in Chicago, that it had already arranged to provide itself with refrigerator cars and would hereafter look after the icing of its traffic without the help of the Armour Car Lines, so that we have already seen the Michigan Central undertaking the *impossible*, and I have no doubt of their ability to perform it. They are not alone in this line of action, as other roads, such as the Louisville and Nashville and the Illinois Central, have arranged to do likewise, and it is common report that other large systems are so arranging. If you think Armour contracts insure proper supply of cars, then behold the existing conditions of the North Carolina berry growers and shippers, where Armour has the contract, and shippers and growers are without cars—resultant loss estimated at from $200,000 to $500,000.

SACRAMENTO CHAMBER OF COMMERCE.

In reference to the lengthy report emanating from the Sacramento Chamber of Commerce and read into the committee record by Mr. Robbins when he appeared before it, would say, that I do not think comment upon my part is necessary, because all who have undertaken to inform themselves at all with respect to the true situation in California, particularly the district referred to, doubtless understand how thoroughly and completely the shippers and the entire fruit industry of that section is under the domination of Armour Car Lines, thus rendering it an easy matter for the car lines to obtain recommendations when wanted. I know of my own knowledge from personal contact with California shippers and growers, that they are far from being satisfied with the situation and that the rank and file did not, do not, and would not, concur in that report. Car-line companies likewise claim that shippers in the Southwest on the Frisco line are satisfied. I offer the following letter to show how the Armour people attempt to force these shippers into line:

ARMOUR CAR LINES,
Springfield, Mo., February 8, 1905.

MESSRS. APPLEBY BROTHERS,
Fayetteville, Ark.

DEAR SIRS: There are pending before the Senate and House of Representatives bills seriously affecting private car lines, and the fight by the advocates of such legislation has about narrowed down to one fight against the Armour Car Lines.

Should such legislation go through our company would no doubt be forced to go out of the business and the railroads would be expected to return to the practice in effect previous to 1898 of furnishing such cars as they could obtain to move the fruit crops. Fortunately, this condition never existed in Fayetteville section, although such would have been the case in 1897 and 1898 had it not been for our cars coming to the rescue of another company when same company was called upon to take care of more business than they had equipment to handle.

Knowing that your interest as a grower is affected, as well as our own, we would ask if you do not deem it of sufficient importance to wire or write both your Senator and Representative protesting against hasty legislation on the subject, as any legislation tending to disturb present conditions might seriously affect your interest and that of all growers in the peach or strawberry district of Arkansas.

Yours, very truly, H. M. STEELE, *Agent.*

Now, listen a moment and you will hear the car lines shout, "Subordinate officer; the company did not authorize that letter."

SENATOR CLARK'S ROAD.

Mr. Robbins and other car-line witnesses have dwelt at great length upon the alleged philanthropic work in which they are engaged in opening up new fruit-producing fields, claiming, as they do, that the car lines are pioneers in blazing the way for the fruit growers and industry that follows. In this connection it was claimed that the car-line company had gone to great expenditures of money in building ice houses and erecting ice plants in new territory in advance of the industry itself, and from this line of argument they would have it appear that the entire fruit industry of the country had been developed by private car line companies. Georgia and the Southwest were cited as being places where the car-line company erected extensive icing plants. I note the fact that along this line of argument the car-line witnesses cite and cite again one concrete instance in illus-

tration of this pioneer work of theirs. I refer to the ice house—the $75,000 ice house—recently erected on Senator Clark's road. Mr. Robbins says:

What is known as the San Pedro road, Senator Clark's road, is now building from Salt Lake City to Los Angeles, and is to be finished some time during the season, no one knows just when. They tendered us a contract and we made an exclusive contract with them for three years, and we are now building out in the desert an ice house costing us $75,000. I do not know whether we will have a single car over that road this summer or not.

The facts are that this so-called "Senator Clark's road" provides a 700-mile cut-off in the transportation of citrus fruits from southern California to eastern points, and that the road has become a part of the Southern Pacific System, and the Southern Pacific System is under exclusive contract with the Armour Car Lines, and the only hazard, under these circumstances, which the Armour Car Lines assume in erecting this ice house is the hazard that there will be no more citrus fruit crops in southern California. They have rolled this particular ice house under their tongues as a sweet morsel, and here I have given you the real facts concerning it.

ARMOUR & CO. AS DEALERS.

Referring to Mr. Robbins's testimony with reference to Armour & Co. being dealers in fruits and produce, I can not believe that there is any doubt in anyone's mind as to Armour & Co. being dealers in the commodities named. If there be, however, I wish to draw the attention of such person or persons to the testimony at the various hearings on this point.

The advertisement referred to by Congressman Stevens when interrogating Mr. Robbins appeared in a trade paper known as the Kansas City Packer under date of January 7, 1900, and subsequent issues, reading as follows: "Cold storage for apples. We also buy and sell apples, potatoes, etc., for our patrons. Correspondence solicited. Armour Packing Company, Kansas City, Kans."

Mr. Robbins also stated something about their handling car lots of oranges in small markets not in competition with anyone. On the face of it such a statement is most remarkable. It carries with it the inference that the markets referred to had never previously consumed oranges.

Mr. Robbins, in attempting to explain the difference of refrigeration charges from Michigan points to Duluth, Minn., stated:

In 1900 we handled Michigan peaches to some extent, and our rates to Duluth, I believe, were $15. Under the railroad rule of classification previously in effect, the railways paid us or distributed the most of the ice used for refrigeration, and our rates were based on this condition. In 1903 the railways changed this rule and discontinued absorbing the cost of the ice. We had nothing whatever to do with this change in rule, and our profits were not increased by the increased cost in refrigeration over the previously low one. The matter of changing this rule is a matter of classification in freight rates, and is a matter between the roads and the shippers, and the same is not chargeable to the car lines in any way.

Again Mr. Robbins's statement is at variance with facts.

In 1900 the Armour Car Lines had nothing to do whatever with the traffic; the railroads refrigerated and carried the products from *Michigan* to Duluth and billed against the traffic for the estimated

amount of ice used at so much per ton, all of which is easily verified from station agents' records, and the cost under these conditions was not a flat rate of $15 per car nor any fixed sum per car, as Mr. Robbins has stated, but varied, according to weather conditions, from $5 to $15 per car, and as soon as the exclusive contract with Armour Car Lines was executed the charge for refrigeration was advanced to the flat charge of $45 per car. Before the exclusive contract Armour did not do the business.

STATEMENT OF EARNINGS.

Mr. Robbins, when requested to file a statement of earnings and expense with the House committee, stated:

"I would like to know whether it is possible to submit those figures to the committee without being open to our competitors, so that they may learn the details of our business?"

Note how carefully Mr. Robbins desires to protect his company's business secrets and how important he considers it that his competitors be not allowed to gain any information concerning the same, notwithstanding the fact that Armour Car Lines and Armour & Co. are daily possessed of illegitimate knowledge concerning their competitors' business. (See testimony before House committee, pp. 129–130.)

In previous sworn testimony Mr. Robbins has claimed an inability to supply such information:

Mr. MARCHAND. What became of your records?

Mr. ROBBINS. Well, we used a loose-leaf system, and all the deadwood that we have no use for we get rid of.

Mr. MARCHAND. Do you call the record of $45,000—do you treat that of no importance?

Mr. ROBBINS. When it is dead and gone we do not keep old records. (See testimony, I. C. C., October, 1904.)

REBATES.

Mr. ROBBINS. It can perhaps best be explained by illustration. Take Sacramento fruits, particularly pears coming up the river by boat, are put in cars at Sacramento. Shippers watch the fruit when it comes, and when one of them finds a car of stuff that is comparatively green and thinks he would like to have it ripen up a little, he will give us orders to let that car run without ice to our first icing station, which is Truckee, at the summit of the Sierra Nevada Mountains, where ice is cheaper than in California. The next car he will decide that it is better to have iced at Sacramento, and will so order. It would be very difficult to cover that in a tariff so that a man at the eastern destination would know whether a car was iced at Sacramento or Truckee. There would be nothing in the billing to show that we billed such cars at regular Sacramento rates. When a man orders his car run to Truckee under ventilation it saves ice, and we get cheaper ice on top of the mountains, and we rebate to the shippers the difference between the cost of the car iced and any ice that we may save by not icing it, and that car will cost less than icing at Sacramento. It is not a rebate. It is an equalization. It is a method of bookkeeping. It is the most convenient for the shipper and for us. He then has the same charges collected at the eastern end of the line on all cars, and where there is a saving in the ice to us he gets the benefit of it.

A very singular explanation indeed. It is true that icing may be provided cheaper at Truckee than at Sacramento; it is also true that many cars, not only of pears, but other fruits, loaded in Sacramento district, go forward to Truckee after loading, for the initial icing, and Mr. Robbins states sometimes to Ogden. What are the insur-

mountable difficulties, however, preventing the publishing of a tariff to apply from those points? There certainly can be none if the transaction be an honest one. The facts are, however, that a large portion of this fruit is sold f. o. b. California. There are a few markets throughout the United States known as auction markets, the principal ones being Chicago, St. Paul, Minneapolis, Kansas City, New York, Boston, and one or two others. Shipments to all non-auction markets are sold f. o. b. California, consignee paying freight. Mr. Robbins states that consignee has no means of knowing whether or not his car of fruit has received proper refrigeration, or whether it has been run under ventilation as far east as Ogden. Consignee does know, however, by experience, that the full refrigerator rate always applies, and the settlement, if any, is always made at the western end of the line, without the real owner of the fruit or the consignee having any knowledge whatever of the transaction. And it is this sort of manipulation and scheming that the fruit industry of this country is now protesting against. Mr. Robbins's statement is an open confession of one of the iniquities of the car line system. He admits that the consignee or real owner of the fruit, except when consigned to auction markets, has no knowledge of the fact that his fruit is being run under ventilation—or, in other words, improperly refrigerated—notwithstanding the fact that consignee is required to pay an outrageously extortionate price for this alleged scientific refrigeration. I might add further that it is in testimony before the Interstate Commerce Commission that in addition to that practice Armour Car Lines pay regularly varying amounts in rebates to certain California shippers, and Mr. Leeds, general manager of the Santa Fe Refrigerator Car Lines, before the Interstate Commerce Commission, October hearing, under oath declared that his company paid $25 per car rebate to the shipper of all cars consigned to Chicago and $35 per car on consignments to eastern markets, and maintained that it was necessary to do this in order to meet Armour competition. I state emphatically that such rebates are in addition to any settlements or reduction from the Armour tariffs because of shipments running a certain portion of the distance under ventilation. In this respect the car lines stand self-confessed and self-condemned. Right here I wish to draw your attention to the means this double carrier system affords for just such manipulation and how difficult it is under the system to definitely fix the responsibility or ascertain the true situation, and, in addition, the rebate arrangement is agreed upon before shipping begins at so much per car, when it could not be known what cars would go part way under ventilation, and because of this rebate arrangement on shipments from northern California refrigerating rates are about $30 per car higher than from southern California.

For further evidence as to rebates see testimony of Messrs. Watson. Robbins, and Leeds, Interstate Commerce Commission hearing, October, 1904.

MISCELLANEOUS WITNESSES.

As to the testimony of some of the witnesses, said to be growers, who appeared here to give testimony in behalf of the Armour Car Lines, I am satisfied that the committee drew its own conclusions as to the value of such testimony.

I only want to refer to the declaration of one witness in this connection, who warned the House committee of the resultant danger to the shipping interests of the country if Congress should attempt to bring the car lines within the pale of the law, declaring, as he did, and which is true, that Armour Car Lines were not common carriers nor chartered by the state as such, and therefore may cease and desist business at will; and the carriers of the country, not having been required to own and control their own cars, it is clearly apparent the disaster Armour Car Lines may work in any community when it may be to their interest to do so, by and through the exercise of their tremendous power as the owners of all the instrumentalities of railway carriage. If that be true with respect to Georgia—and it doubtless is true—it is the most powerful argument that I could offer for the dethronement of this monopoly, as it must be plain to all that when the Armour system has spread to cover all the railways of the country Armour & Co. would have within their hands the means to compel at will a complete reconstruction, commercially, of any State whose territory had come under its domination. I ask you, gentlemen, can we intrust with safety to any corporation such a tremendous power?

RAILWAYS FIGURE THEIR OWN INTEREST.

Mr. Robbins, before the House committee, says further:

Mr. Ferguson figures out in detail why it would pay the railroads to own their own refrigerator cars. I have found that the railway men figure out their own interest with a sharp pencil, and consider it is for them to determine whether it is for their best interest to buy cars or rent them.

All of which does not answer my statement and figures offered in support thereof, that it is cheaper for the carriers to own their own cars than to pay an exorbitant Armour car rental. And I might remind Mr. Robbins that witnesses for his company are the only persons who have maintained to the contrary, and I point to the records of these hearings in proof.

And again I wish to remind Mr. Robbins that it is not only a fact that Armour Car Lines and other car-line owners are the only protestants against car-line legislation, but that the great railway interests, whose very existence, as Mr. Robbins and others would have you believe, are dependent upon the private car line system, and which he claims is menaced by proposed legislation, have not only refrained from publicly assisting the car-line companies in their present dilemma, but many of them have publicly denounced the private car line system. (See testimony of J. W. Midgely before the Interstate Commerce Commission, October car-line hearings. Also many circular letters sent out to railway interests of the country, in which Mr. Midgely states that he is representing the railways in their fight against the car-line companies.)

Also see testimony of R. P. Ober, general agent, Northern Pacific Car Lines, as given before the Interstate Commerce Commission May 11 last. Mr. Ober makes it perfectly clear that the railway companies are able and competent to carry on a refrigerator car-line business. Why does not Mr. Robbins keep quiet concerning the interest of the railway companies and let the railroad men with the "sharp

pencils" he has mentioned get busy in their own interest? (For Mr. Robbins's testimony, see p. 114, House committee record.)

DOES THE SIZE OF A MAN'S BUSINESS INDICATE THE DEGREE OF JUSTICE HE IS ENTITLED TO?

An effort was made by Mr. Urion and others, as will be observed by referring to Mr. Urion's statement before the House committee, page 192 of the record, to impress the committee with the relative nonimportance of my protest, upon the theory that my shipments were so light as to be of no consequence, and therefore the interests that I represent should be entitled to no consideration. In support of that contention he quoted in part, and in part only, my testimony as given in the June hearing, and which referred to only one commodity, that being peaches. I have never claimed to be a heavy shipper of Michigan peaches. Northwestern dealers, as a rule, are not. I can indicate wholesale fruit houses in Minneapolis and St. Paul doing more than $1,000,000 of business annually who handle no more Michigan peaches than does our firm. I am sure Mr. Urion's statement in this regard will have no force with this committee. It must be plain that, whether I ship one or a thousand cars, I am entitled to equal protection on the cars that I do ship. I might add that last season, in Duluth and Superior, with a combined population of more than 100,000 people, only one car of Michigan peaches was marketed. The high transportation charges have practically killed the Michigan peach business in those markets. Our supply is drawn from other sections. Had Mr. Urion desired to quote more fully from my testimony that fact would have appeared to the committee. If the size of our business has any bearing upon the subject at all, I have no hesitancy in stating for the information of the committee that our firm annually pays the railway carriers of the country for transportation more than $100,000, or a sum, I think, far in excess of the sums paid by Armour's Michigan witnesses, to whom Mr. Urion and Mr. Robbins frequently refer. And further in this connection, we are not protesting alone against the conditions that exist in Michigan, but of conditions elsewhere; and again I will add, had it not been for this same private car line system, that has discriminated against our business from its beginning, our business to-day would be much more extensive than it is. And it is against this system, that robs us of the reward of our own industry, that I am protesting. Because of this the car-line people have been before these committees shouting: "Radical!" "Rampant!" "Irresponsible commission men!" "Middlemen who are parasites on industry!" And all because we do not propose to tamely submit to their domination. I am none of these, nor do I represent any such, and I hope I may be pardoned in this connection for observing that these private car line hearings have shown beyond the peradventure of a doubt that the private car line manipulator is a quadruped, and that he has all four of his feet in the trough. Even though my business be small as compared with the colossal system against which we are protesting, it may not be amiss to remind this committee that more than 125 wholesale fruit firms, who are largely cash buyers of the products in which they deal, and doing an annual

business of more than $75,000,000, irrespective of other interests, are directly back of me in this fight, and I am but carrying out their instructions.

Mr. Urion then talks to the House committee as to whom and what I represent, stating it to be a number of retail dealers, professional men, etc., who know nothing about the question and have no interest in the private car line question. I submit that Mr. Urion is neither qualified nor authorized to speak for the interests that I represent, and as to their interest in the private car line subject, it is self-evident that every citizen is deeply interested in a situation such as the one under discussion—one that admits of enthroning a monopoly, especially a food monopoly. Possibly Mr. Urion's environments have been such as to lead him to believe otherwise. If such has been the case, he is doomed to a sudden awakening, and that in the no distant future.

Mr. Urion stated: "Mr. Ferguson has not been authorized to represent the Wisconsin Master Butchers' Association." In answer to which I offered credentials, duly executed by that organization, which were forwarded to me without any solicitation upon my part. Further, I hold credentials from all the organizations that I have mentioned, but will state that the one named in the records as the "Minnesota Jobbers' Association" should appear as the "Minnesota Shippers and Receivers' Association." I appreciate, of course, that this committee will not be disposed to consider or decide this question based upon whom or what I represent, but will endeavor to decide the question upon its merits, irrespective of who is for or against the proposition. But, inasmuch as these public statements of the car-line witnesses before the committees have been given wide publicity, I deem it of some importance to answer them.

ARMOUR THREATENS WITNESSES.

I quote from Mr. Urion's testimony (House committee, p. 199):

Mr. STEVENS. Do you know that there were threats made against some of the growers by some of your agents?

Mr. URION. There were no threats. That matter was highly magnified. One of the subordinates of the company met an old friend of his who had come down there and jokingly they passed some words. That was greatly magnified.

Mr. STEVENS. Then you deny that this occurred; that this did actually occur—that your agent did make an implied or direct threat?

Mr. URION. I deny that he made any threat at all. I took him over to the office and examined him about it. I believe his story that he did not make any such threat, and I said to the Commission at that time that we would not tolerate anything of that kind. It was done by a subordinate with no authority, if he did say it. If you only knew of some of the things that are being resorted to in this fight, that are being made by the middlemen, you would not be surprised at some of the misstatements.

The best answer to the above is testimony, June car-line hearing, page 379:

TESTIMONY OF JEROME MAYNARD, FRUIT SHIPPER, GRAND RAPIDS, MICH.

Mr. ORTON. Did you, after the session of this Commission closed last evening, have a conversation with Mr. Wolcott in this room?

Mr. MAYNARD. Yes, sir.

Mr. ORTON. Did Mr. Wolcott open the conversation, or yourself?

Mr. MAYNARD. Mr. Wolcott.
Mr. ORTON. And whom did he address besides yourself?
Mr. MAYNARD. N. Vinkenmolder, of Grand Rapids.
Mr. ORTON. Was it in the back part of this room?
Mr. MAYNARD. Yes, sir; just outside the railing.
Mr. ORTON. And what did Mr. Wolcott say?
Mr. MAYNARD. He said, "You fellows had better stayed at Grand Rapids. We will make it warm for you here. We will give you the hot end of the stick?"
Mr. ORTON. What did you say to him?
Mr. MAYNARD. I said we expected him to, and told him to go ahead and do his worst.
Mr. ORTON. What else did he say to you.
Mr. MAYNARD. That Grand Rapids had had favors, and we got you last year just where we wanted you.

I submit the testimony as a complete answer to Mr. Urion's denial. I call attention to the fact that there is no evident friendship between Mr. Wolcott, who is superintendent for Armour Car Lines, and Mr. Maynard, whom Mr. Urion has stated Mr. Wolcott jokingly address as an old friend. In reference to the favors Grand Rapids had enjoyed, to which Mr. Wolcott referred, that was during the year that the exclusive contract did not apply to that point.

STATEMENT OF THOMAS B. FELDER, ATTORNEY FOR ARMOUR CAR LINES, SAID TO BE REPRESENTING THE GEORGIA PEACH GROWERS.

I shall refer but briefly to Mr. Felder's testimony, first calling attention to these statements:

I practiced law in Atlanta. I have for a number of years represented the Armour interest at Atlanta as attorney in Georgia. I appear here, however, on behalf of several prominent peach growers of Georgia.

These middle men, until the present system was brought into effect, have lived as parasites upon this industry, and the car lines assisted much in regulating this parasite or barnacle that had fed upon peach growers from the South since the beginning of the business.

The average value of a car of peaches in New York is $1,200, freight and icing, $270.

So Mr. Felder states.

Every one who is informed—and particularly do the Georgia peach growers know—that such average values are not realized from their shipments. In fact, I read of the Georgia peach growers sustaining a loss last season by reason of shipments not paying expenses. The Georgia peach grower, I maintain, would indeed be very happy if Armour Car Lines would guarantee them average sales on their fruit of from $700 to $800 per car.

Again, Mr. Felder, the attorney who briefs both sides of the case, delivers himself thus:

These exclusive contracts that have been exciting everybody in the country from the walking delegate to the occupant of the White House.

Note how flippantly this hired man, who claims to be farmer, attorney, grower, and legislator—a conglomeration of all—refers to the "occupant of the White House." And then, in marked contrast with his statement that these contracts are "agitating the minds of everybody," he declares in the next breath that only a few middlemen, whom he characterizes as "parasites on industry," are protesting.

I fear Mr. Felder is not good authority on this subject.

And again, Mr. Felder goes into convulsions and emits a lot of irrelevant matter, and tells the committee that it requires "capital," "credit," and "responsibility" to engage in the buying of these products, and that none of the protestants are buyers. I submit again, as I have previously done, that the western dealers are largely buyers. The wholesale fruit dealers throughout the country as a whole will compare favorably with any other jobbing interest with respect to the relation of the capital invested to the volume of business handled and the manner in which that business is handled.

And again, he exclaims—

I do not know Mr. Ferguson. I assume he is a very nice man and no doubt a very honest man, but of all the commission merchants in the United States who are aggrieved by the car lines and their manner of doing business, I think only two of them came here to present their grievances.

Car line witnesses have again and again dwelt at length upon this statement and have published the same, doubtless at advertising rates, throughout the country. I therefore wish to state that, if it is the desire of the committee that each of the protesting firms be distinctly represented, and if the committee will announce publicly to that effect, I am sure that when Congress again convenes Washington will be crowded with an army of protestants coming from every section of the country. It must be plain to all that the method of procedure we have adopted is simply in the interest of economy of time and money. Business men, shippers, and growers throughout the country can ill afford to drop their business and personally take up this fight, and therefore deemed it wise to join together and determine, first, that which the majority most desire, and then select some one or more person or persons to represent them and their present case, all joining in the expense.

Mr. Felder proceeds:

Mr. MANN. And now you say that there are very few of those who are opposed to it?

Mr. FELDER. Yes, sir.

Mr. MANN. You think those very few men have created a great deal of furore?

Mr. FELDER. I used to be a legislator myself, and I was chairman of a very prominent committee of the house. We have a great many of this sort of thing, and when a man hung his hat in our committee room, concerned himself about legislation on subjects in which he had no interest, we would call him a "walking delegate." And I do not know any difference between the walking delegate who goes about the country and gets up labor compacts and the walking delegate who goes about the country and gets chambers of commerce to indorse certain legislation. He is none the less a walking delegate, if he is engaged in promoting legislation, even though he is a millionaire.

Now, my recollection is that some gentlemen who do not reside in our State visited several towns therein and called meetings of the chambers of commerce, and said, "If you will indorse these various propositions you will get something for nothing."

Now, we have not attained to that ideal condition in my State where we are not willing to get something for nothing; we are like other people.

Mr. STEVENS. I suppose that you would class a man like President Truesdell, of the Lackawanna, and Mr. Cassatt, of the Pennsylvania, as a walking delegate because he believes some legislation is necessary on private-car matters?

Mr. FELDER. I would not so classify him, as I know nothing about him.

Mr. STEVENS. Have you not noticed that almost every official of a railroad in the United States who has given an expression on this subject says that there should be some legislation on this subject?

Mr. FELDER. No, sir; I have emphatically not.

The testimony I have just quoted needs no comment. Concluding with this witness, I draw the committee's attention to his testimony as it appears on page 227, House committee record, wherein Mr. Felder, the attorney, admits having no knowledge of the famous transportation case known as the Social Circle Case, in view of which I do not think his statements will attract the serious consideration of anyone, as it must be self-evident that a carrier's attorney who is professedly ignorant of a transportation case of this nature should not assume to argue the constitutional powers of Congress to enact interstate-commerce laws, nor assume to tell Congress what it may and may not do. I think I may well refrain from further consideration of his statements, which must be accepted as the utterances of a hired man who is paid to shout, and his lamentations may be likened unto the tears of mourners who weep for hire.

I wish to notice some of the points made by Mr. Robbins, manager of the Armour Car Lines, in his statement before the Committee on Commerce. In describing the application of refrigeration to perishable traffic, he mentions the fact that "equipment is parked in advance for business in widely separated parts of the country at different seasons of the year, with consequent delays and idle cars."

This is in a measure true, but he should also have stated the fact that the parking is done by the carriers themselves and is in no way affected by the ownership of the refrigerator cars parked, and the delay is incident to the service and in no way relieved by the private ownership of the cars. It is an indisputable fact that the whole service of parking the cars is performed by the carriers, and the carriers serving the various different fruit belts own nearly all the icing stations and are required to maintain an icing system and an icing force for these stations to take care of the pick-up, or less-than-carlot, traffic in refrigerated products; so that, if the Armour Car Lines maintain such a system or a part of the system, it is, in fact, a duplication of what the railroads have already provided and do and must maintain, and it operates as a double burden upon the traffic for that service. But Armour Car Lines have no such force or any force employed in the actual work involved in taking care of traffic. The man who does the icing at Grand Rapids, Mich., testified before the Interstate Commerce Commission on the 11th of this month that he iced the refrigerator cars at Grand Rapids under contract with Armour Car Lines, and his contract provided for the entire refrigerating service at that point, including the inspection of the empty cars to ascertain their fitness for loading, which inspection amounted to looking into the cars and seeing that they were clean and the drain pipes were open, and, in addition, the inspection of all other Armour cars passing through this station—that is, inspecting the bunkers to ascertain whether or not reicing was necessary—all of which services were provided for in the contract price for ice of $1.65 per ton when icing was done from platform and $2 per ton when icing was done from wagons at team tracks. This constitutes the whole service. There is nothing more to it. This same witness, Mr. Horner, testified that some one or another of Armour's employees would appear there from time to time, and the only service which he knew that such employee performed was to keep check on the witness to see that he did not make an overcharge for ice used. Grand Rapids is one of the

heaviest loading points in the State of Michigan, and it appears from this man's testimony that there was not a single employee of Armour's located there. This same witness had, prior to the Armour exclusive contracts, performed this identical service for the Michigan roads. (See testimony before Interstate Commerce Commission, Chicago, May 11, 1905.)

REFRIGERATION CHARGES.

Mr. Robbins states that "the refrigerator charges to the public are based upon the cost of ice, supervision, etc., together with reasonable profits for the investment, claims, contingencies, etc., and are as low as consistent with good service."

The supervision, I have shown, in so far as real, is a duplicate in all things, and therefore, to the full, a burden upon traffic. In all official classification territory the classification provides for a charge of $2.50 per ton for ice in the bunkers, which admits of a profit to the parties performing the service, and as further evidence with respect to the profits accruing to the Armour Car Lines on their refrigerator cars, refer to the testimony of W. Streckmens before the Interstate Commerce Commission on May 12, formerly employed by Armour Car Lines as stenographer. Mr. Streckmens testified before the Interstate Commerce Commission that the Northwestern Line billed ice to Armour Car Lines at $1 per ton. The Milwaukee and St. Paul billed on Armour Car Lines at $2.50 per ton and rebated back to them $1 per ton on counterclaims. The other roads each $1.25 per ton. And that the profits to Armour Car Lines on their refrigerator-car business amounted to from five to six hundred per cent. I know there is a $15 flat rate per car for refrigerating packing-house products from St. Paul to Pacific coast points, over lines on which Armour & Co. have no exclusive contracts, and packing-house products require more frequent reicing than fruits. This will give some idea of the unreasonableness instead of the reasonableness of the profit; but this profit, in my estimation, is of less consequence than the other evils incident to placing this mammoth merchant upon our highways, equipped with a system that not only enables it to levy an extortionate tax upon the commerce of the country, but also provides it with a complete means of obtaining illegitimate knowledge of its competitor's business—knowledge that, for all practical purposes, may as well be obtained by and through a system which enabled it to rifle the United States mails. It is just as great a wrong against the fruit dealers and shippers to give this power and privilege to Armour Car Lines as it would be to give to some third private party a right to open and examine the business correspondence of any of you gentlemen of this committee, or of any man engaged in business, and this system, when perfected, will enable Armour to fix both the price to the growers and the price to the consumers of all perishable food products. There is no room for doubt about it.

Mr. Robbins quotes extensively from the testimony of certain Michigan growers brought to the Chicago hearing by Armour Car Lines and kept and entertained at Armour's expense. He does not give their whole testimony. The cross-examination of these witnesses boiled their testimony down to this one point, and only this:

"That they would rather have an Armour car and pay Armour charges than to be altogether without refrigerator cars;" and for verification of this I refer to their printed testimony at this hearing, which is accessible to all. But see also the testimony of other Michigan growers and shippers at the same hearing, who came and testified at their own expense. They tell an altogether different story as to the prevailing conditions in the Michigan fruit belt. And in further contrast with testimony of Armour's Michigan witnesses, I wish to insert in this statement extracts from the testimony of Mr. Patriarche, traffic manager of the Flint and Pere Marquette Railway, in the June car-line hearing, as follows (p. 34):

Mr. DECKER. And under the method of handling traffic, please tell the Commission whether the service was regarded as satisfactory by the company. I am speaking about 1900 now.

Mr. PATRIARCHE. I would say, so far as our company is concerned, we regarded our service as perfectly satisfactory.

Mr. DECKER (p. 37). The service was then as good as it is now?

Mr. PATRIARCHE. Yes, sir.

Commissioner PROUTY. I understand you to say that you lost a great deal of traffic by your inability to furnish cars. You seem to confine that to local traffic.

Mr. PATRIARCHE. Yes, sir.

Mr. DECKER. What do you mean by local traffic?

Mr. PATRIARCHE. Stations where there is a large production of fruit and no competing railroad—simply our own road.

Commissioner PROUTY. You say at those stations you were unable to handle all the traffic.

Mr. PATRIARCHE. Not at those stations.

Commissioner PROUTY. You did handle it there?

Mr. PATRIARCHE. Yes, sir.

Commissioner PROUTY. But at competing stations you allowed a good deal of it to go to your competitors that you might have retained yourself?

Mr. PATRIARCHE. We let a good share of it go, to take care of the stations where we were the only road.

Mr. DECKER. You lost some of the competitive business?

Mr. PATRIARCHE. Yes, sir.

PATENTS CONTROLLED.

Much has been said by car-line witnesses with respect to patents controlled. I quote from Mr. Robbins's testimony before the House committee, as follows:

There are a great many bona fide contracts in force between the railways and car companies in all sections of the country, which run for various terms, up to seven years at least, which, together with Armour's patents owned by these companies on the combination ventilator and refrigerator cars, have a direct bearing on any legislation as a whole.

Any claim that car lines control patents to the extent that may render it even difficult for carriers to supply refrigerator cars for themselves, to my mind, should receive scant consideration. Such claims are nonsensical in the extreme, as evidenced by the fact that the Santa Fe road, formerly under contract with Armour Car Lines, discontinued the use of the Armour cars and to-day own and operate a more modern refrigerator car line than that of the Armour Company. We now see roads, such as the Michigan Central, New York Central, and Louisville and Nashville, following in the same line; and, again, we have the Northern Pacific road, which taps one of the most important fruit belts in the United States, owning and operating a refrig-

erating car line superior to that of the Armour Car Lines, and increasing and improving its system from year to year as necessities demand.

MILEAGE COMPENSATION.

On page 134, record of hearings before the House committee, Mr. Robbins testifies with respect to profit accruing on the icing service and mileage fee as follows:

Mr. STEVENS. Then you base your charges for icing on the cost?
Mr. ROBBINS. On the cost, with a reasonable addition for profit.
Mr. STEVENS. Certainly. Do you not calculate to make an added profit out of the icing to compensate for any lack of profit in mileage?
Mr. ROBBINS. As I have stated, mileage on freight cars does not provide a reasonable remuneration; so that if we try to do the refrigeration at bare cost and depend upon the mileage we can not be in the business.

In this connection it must be interesting to compare testimony of Mr. Ellis, general manager of the Armour Car Lines, as given before the Interstate Commerce Commission, June, 1904, wherein he declares the mileage to be ample and to return a satisfactory compensation.

ICING COST.

Mr. URION. You may state to the Commission, in your own way, the cost of icing, cost of ice, as near as you can, and the number of times necessary to reice between the points, and you may give any general information you may have on the subject.
Mr. ELLIS. To begin with, the car has to be initially iced within the neighborhood of 6 tons of ice, at a cost of from $2 to $2.50 per ton, at an expense of from $12 to $15. We go upon the theory that ice is cheaper than fruit, and if we make any mistake about reicing we try to overdo it rather than otherwise. On a shipment from Michigan for Boston, for example, we would reice at four points after it was initially iced, and sometimes five times. The shipments vary in length of time they are in transit, ahd we have additional stations to meet these circumstances. The reicing at these different points represents on an average a couple of tons in each case, and that ice would not be obtainable for less than $2.50 per ton, and sometimes it would cost more. The cars, when ordered by the shippers, are not always loaded with promptness. If they are held over we have to see that they are replenished, and the longer they stand on sidetrack and shipping station the more ice they require, generally at the first icing point. We aim to extend a first-class service, and do not figure to charge more for it than it is worth or do more than make a reasonable charge for it, everything considered.

MAN WHO DOES THE ICING.

The sworn testimony of Mr. Horner, who does the icing under contract for Armour Car Lines in Michigan, is to the effect that $2 per ton is the maximum price charged to Armour for ice in the bunkers, and that only when hauled in wagons; otherwise $1.65 per ton. How can you harmonize with this Mr. Ellis's statement that the initial icing costs the car lines from $2 to $2.50 per ton? And no witness produced could point to a single ice house in Michigan owned or operated by Armour Car Lines.

Mr. URION. What are the elements that come into the management of refrigeration of these cars as to expense and labor?
Mr. ELLIS. Among them is the expense of our district men, experienced in the handling of perishable fruit; men who can not be picked up just for the service during the Michigan fruit season, but men we have to keep on the pay rolls

from one year's end to another, and we use them as far as we can in the fruit handling business of our cars. Again, we have the traveling expenses of these men and others, such as telegraphic expenses, and a good many other items on that order.

The Michigan shippers themselves did the loading and have been relieved of no part of the loading service. (See testimony before Interstate Commerce Commission, June, 1904.)

In this connection, refer to testimony of A. J. Horner before the Interstate Commerce Commission, May 11, 1905, who performed all the Armour services in the State of Michigan at $1.65 and $2 per ton for the ice in the bunkers, including inspection, etc.

Mr. URION. Any other general expense in connection with that? Have you enumerated all the expenses in connection with that?

Mr. ELLIS. There are incidental expenses, such as local rents, stationery, postage, ice-house depreciation, and depreciation of the plants that we have on the lines of the different railroads to ice cars with facility. Then we have claims for loss and damage, also executive expenses as well.

In passing, please note the "postage" expenses and its importance as applied to the icing of a car. The witness certainly must have been grasping at straws.

Mr. URION. In the making up of this tariff of rates, what was taken into consideration in arriving at the right expenses such as you have enumerated here in connection with the services and allowing for what you consider to be a fair profit?

Mr. ELLIS. Yes, sir; we figure that item at from $4 to $6 per car.

Mr. URION. Net profit?

Mr. ELLIS. Net profit.

Mr. URION. Of from $4 to $6 per car?

Mr. ELLIS. Yes, sir.

Mr. URION. I believe that is all.

Commenting on this same business that Mr. Ellis swears yields only $4 to $6 per car profit, Armours are seeking to compromise the Michigan Case before the Interstate Commerce Commission on a basis of a reduction of from $7 to $10 per car.

Commissioner PROUTY. Take now a shipment to Duluth. How many times does that shipment require reicing on the way to Duluth, depending upon the way it was routed?

* * * * * * *

Commissioner PROUTY. About how long is the run of a car from here (Chicago) to Duluth?

Mr. ELLIS. Well, that is more or less of an unknown quantity, but I can give you an idea of the points we would figure on that car would require reicing. I might say that we regulate these icing points a good deal by experience. If we find an unusual movement of stuff to certain points, we might find it necessary to put in another icing station a little farther away or closer to shipping point. The car, if Pere Marquette and moving via Chicago, Burlington and Quincy road to Duluth, would be reiced at St. Joseph, Mich., Chicago, Grand Crossing, and St. Paul. A car from the same point, moving via the Wisconsin Central, would be reiced at St. Joseph, Chicago, Stevens Point, and St. Paul. There are some routes by which it will require more icing attention than by either of these routes.

Mr. Ellis's testimony in this connection is at variance with the facts. First. Fruit does not move from Michigan points to Duluth via the Chicago, Burlington and Quincy road, and never has. With reference to the Wisconsin Central, that road handles more or less of the Michigan shipments consigned to Duluth, and there are rarely more than two icings, the first one being at initial point and the re-

icing at Chicago, either at Wood street or Grand Crossing. When the shipments pass the Chicago icing stations the bunkers are refilled, and that icing brings the car through to destination except in cases of delay to shipment in transit by the railway companies.

Mr. DECKER. You say that on trip to Boston it takes 6 tons of initial icing with reicing three or four times?
Mr. ELLIS. Yes, sir.
Mr. DECKER. I think you said it took 2 tons for each reicing?
Mr. ELLIS. Yes, sir.
Mr. DECKER. The least reicing, then, would be 6 tons for the whole trip?
Mr. ELLIS. Yes, sir.
Mr. DECKER. Making 12 tons, including the initial icing?
Mr. ELLIS. Yes, sir.
Mr. DECKER. You pay about $2.50 per ton for the ice?
Mr. ELLIS. Yes, sir.
Mr. DECKER. That would be $30 for the trip to Boston?
Mr. ELLIS. Yes, sir.
Mr. DECKER. You have a tariff, in effect prior to these contracts, from Michigan points to Boston, and which has been offered here, which specifies a rate to Boston of $20.
Mr. ELLIS. I believe that tariff was admitted by Mr. Robbins.
Mr. DECKER. That was during the period of competition, was it not?
Mr. ELLIS. It was during the period when free ice was obtainable.
(No evidence of record of free ice except the initial icing, which cost about $5.)
Mr. DECKER. You have had that for a number of years?
Mr. ELLIS. I do not know anything personally about that tariff.
Mr. URION. He figures three reicings, and original icing is figured up independently of anything else, amounting to $30. You have testified there were four icings—that would be one more icing. Your testimony was that it took 2 tons under normal conditions. Tell me the cost of icing alone to Boston is $35. Is that correct?
Mr. ELLIS. The points I gave.
Commissioner PROUTY. You gave the points, and is that correct? It figures out $35.
Mr. ELLIS. I would say that is correct.
Mr. URION. Reicing makes it $35?
Mr. ELLIS. Yes, sir.
Mr. URION. The icing cost, independent of labor, etc., is $35, leaving $20. Now, you say your profit per car is $4 to $6. How is the difference between the cost of icing and the profit—$4 to $6 profit ($14)—made up?
Mr. ELLIS. The expense of our men in the field and those items I have already called attention to.

It would appear that the items of expense referred to by Mr. Ellis, in addition to the mythical number of men, consist of such expenses as telegraphing, postage, stationery, etc.

AS TO THE ADEQUATE SUPPLY OF CARS.

It is claimed by the car lines that, through the system, and through its system only, can an adequate supply of cars be had for the prompt handling of perishable goods. I quote from Mr. Robbins's testimony (p. 156, House hearings):

Mr. STEVENS. The mileage on these cars, I take it, from your testimony, pays only expenses and depreciation and interest?
Mr. ROBBINS. Yes, sir; but I put it the other way. The mileage on these cars does not provide a sufficient remuneration for a profit, because of the fact that they are out of service between the fruit seasons. There is also much delay to them in waiting and loading in the season. We can not run these cars into a territory just as they want them. Sometimes a great many hundred

cars are there for a week, or sometimes as much as a month, in advance of the movement, and since the North Carolina strawberries have been a prominent crop, as much as 3,000 cars come out of there in a month, and we can not get these cars in that short period, but we commence to park cars there a month ahead.

It will be noted that Armour Car Lines admit of having full knowledge of the importance of the North Carolina berry crop and the time it is ready for shipment. Yet, behold the situation as it exists there to-day, the berry season just closing. Telegraphic reports indicate that hundreds of carloads of berries have been loaded into box cars and hauled by the railroad companies to dumping grounds because Armour Car Lines, who have the exclusive privilege of supplying that particular section of the country with cars, failed to do so. The resultant loss is variously estimated at from $200,000 to $500,000. Does any member of this committee believe for a moment that Armour Car Lines, or the carriers either, will fully reimburse the shippers and growers for the tremendous losses they have sustained? But, for argument's sake, we may allow that the shippers and growers will be reimbursed. But how about the dealers in eastern markets who, at great expense, maintain extensive organizations for the handling of just such crops, for which they must prepare months ahead? Then, again, how about the consuming public, who has been cheated out of its right to purchase and consume those fruits?

WIDENING OF MARKETS.

In a former statement to this committee, and also to the House committee, I endeavored to show that the statements of the car-line witnesses that the "Armour Car Lines system had broadened markets" were untrue, and in this connection I quote from the testimony of A. Patriarche, traffic manager of the Pere Marquette Railroad, as given before the Interstate Commerce Commission, June car-line hearing, and I note from the record of subsequent hearings before the House committee that Congressman Mann refers to my statement in that connection as follows:

Mr. MANN. The number of interstate cars under refrigeration in 1900 was 1,435, as against 1,632 in 1903, and Mr. Ferguson figured that the interstate traffic did not include shipments to Chicago. Now, the Pere Marquette Railroad did not run into Chicago at all at that time, and Chicago is interstate traffic, so that his statement on that was like some of his other statements, slightly erroneous.

That I may make matters clear in this connection and show that my statement was not "slightly erroneous," I wish to insert the following extracts from Mr. Patriarche's testimony:

Mr. ORTON. You have spoken of the wide distribution of shipments from the Michigan fruit region since the Armour arrangement. Is it not a fact that in 1902 and 1903 the crops in the peach regions outside of Michigan were very light?

Mr. PATRIARCHE. I only know it from hearsay. I don't know it as a fact.

Mr. ORTON. You understand it to be so?

Mr. PATRIARCHE. Yes; I have heard there was a light crop, particularly in the East.

Mr. ORTON. A light crop in Delaware, New Jersey, and other Eastern States probably would help to bring the Michigan crops to the East.

Mr. PATRIARCHE. Very likely.

Mr. ORTON. You state that in 1902, out of 6,454 cars, 1,937 went under refrigeration.

Mr. PATRIARCHE. In 1902?

Mr. ORTON. In 1902, yes.

Mr. PATRIARCHE. Yes.

Mr. ORTON. Now, do you mean that 1,937 moved under the Armour arrangement?

Mr. PATRIARCHE. Yes, sir; the Armour cars.

Mr. ORTON. Can you tell us how many went under refrigeration outside Armour arrangement?

Mr. PATRIARCHE. No, I could not.

Mr. ORTON. No record of that?

Mr. PATRIARCHE. No, we have no record. We used the Armour car in 1903.

Mr. ORTON. And you can not tell how many went under refrigeration in your local traffic?

Mr. PATRAIRCHE. Well, there were very few. I can not give the statistics of that at all.

Mr. ORTON. In 1901, you said, there were 3,706 cars. What portion of them were under refrigeration?

Mr. PATRIARCHE. One thousand one hundred and twenty-eight.

Mr. ORTON. In 1900 you mention 4,360. What portion of them went under refrigeration?

Mr. PATRIARCHE. One thousand four hundred and thirty-five.

Mr. ORTON. Can you give the figures for 1903?

Mr. PATRIARCHE. One thousand six hundred and fifty-four.

Mr. ORTON. That is, under refrigeration?

Mr. PATRIARCHE. Yes, sir.

Mr. ORTON. How much was the total?

Mr. PATRIARCHE. The total cars that originated with us was 7,825.

Mr. DECKER. Will you describe the Pere Marquette as it was located some years ago and as it extended by reason of extensions through to Chicago and on the way to Buffalo?

Mr. PATRIARCHE. Prior to 1900 there were several companies that now compose the Pere Marquette System. One was the Flint and Pere Marquette, the others the Chicago and West Michigan, the Detroit, Lansing and Northern, and the Lowell and Hastings. Last year there was an extension made of the Pere Marquette from Buffalo to Porter, Ind., now called the "Chicago division." On the eastern end of Lake Erie the Detroit River Railway, in Canada, was acquired by the interest of the Pere Marquette System.

Mr. DECKER. Have you an entrance into Chicago?

Mr. PATRIARCHE. Yes, sir; we have an entrance into Chicago.

As to the question of the Pere Marquette terminals, I do not wish to contend. As to the shipments originating in Michigan and consigned to Chicago being interstate traffic, I quite agree with Congressman Mann that such are interstate. That in no manner changes or modifies the net result of my statement with respect to the number of cars shipped under refrigeration in Armour cars. Mr. Patriarche's testimony affects (purports?) to give the total number of cars shipped under refrigeration from points on the Pere Marquette line for four years, beginning with the year 1900. It will be observed that the years of 1900 and 1901 were short-crop years, and the year 1902 was the largest crop in the history of that road up to that time, and as a natural consequence a larger portion of the fruit would seek outside markets; and in addition to the increased crop in Michigan there was a corresponding shortage in the Eastern States, as indicated by Mr. Patriarche's testimony, which reasons alone, and no other, are responsible for the increased number of cars shipped under refrigeration in the year of 1902. It will be observed that in the year 1903, with an increased crop of 1,371 cars in excess of the previous year, the total shipments reaching 7,825 cars, the largest in the

history of the road, and this year the Armour exclusive contracts extended to include Grand Rapids, the largest primary peach market in the State of Michigan. That year the shipments under refrigeration dropped down to 1,632 cars, or a falling off of 305 cars, as compared with the previous year, or the first year of the Armour contract. And it will also be noted from Mr. Patriarche's testimony that in that year—the year of 1903—as well as the previous year there was a shortage of peaches in the eastern producing sections, particularly Delaware and New Jersey, which States produce enormous quantities of peaches for eastern markets in normal crop years, and any shortage there operates to increase the demand for Michigan peaches in eastern markets. But, notwithstanding this most favorable condition for Michigan peaches in the year 1903, there was a falling off in shipments under refrigeration amounting to 305 cars, and in the percentage of refrigerator shipments as compared with the total production it will be noted there was a marked falling off.

CONCLUSION.

Armour Car Lines are a disturbing factor on our highways; as a third party they have no proper or legitimate place there. Their own commercial interests are such as to render it impossible for them to serve the public fairly or honestly. The purpose the car lines have served has been greatly overestimated, as is evidenced by the fact that most of the roads have at some time performed this service and many are again preparing to do so.

In asking Congress for relief we are asking no more protection for our business than that already given to all other business, namely, the right to use the common highways in making shipments of perishable commodities unhampered by any arbitrary rules imposed by a powerful competitor and free from that competitor's espionage. We ask no special favors, but do ask that special privileges be denied the Armour monopoly.

To-day we are chafing under this monopoly, and the irritation will continue to grow more acute as relief is delayed. The interest that I speak for will never quietly submit to the present subjection, but will continue the contest, even though it be an unequal one. There can never be harmony between the carriers and the men I speak for so long as this wholly irresponsible third party, who is at best a fly-by-night, has anything to do with the transaction. At will, car lines may throw all the burden upon carriers, and at a time when the carrier is not prepared to assume it. I ask you to give this feature of the situation careful thought.

Concluding, I draw attention to the testimony offered on both sides. The evasive answers and misleading statements of car-line witnesses need no comment on my part.

I now offer a few letters from growers, expressive of their views, and will state that had I understood that mileage and per diem would have been paid I could have produced, without limit, as many growers as the committee desired to hear; but I am of the opinion that the committee has heard sufficient testimony to fully establish the truth of our contention.

EAU CLAIRE, WIS., *May 17, 1905.*

E. M. FERGUSON,
President Western Fruit Jobbers' Association,
Washington, D. C.

DEAR SIR: Please find inclosed herewith a partial list of cars which we received in 1902. You will observe the overcharge of $40 per car in each case, which charge of course is due to the Armour private car service. It is not necessary for me to go into detail relative to this matter, because I believe you have more information already than what I am able to give. I wish to say that in most of these cases cars originated at Shelby. The time for delivery of cars from Shelby to Eau Claire is about forty-eight hours. Our railroad companies here, namely, the Chicago, Milwaukee and St. Paul, the Wisconsin Central, also the Northwestern, all agreed to give us refrigerators free of charge if they were allowed to put them at the shipping point where we are shipping from. However, the Pere Marquette people claim that they could accept no refrigerators other than the Armour cars. The result of this gross overcharge has not only been an injustice to the shippers of Michigan as well as ourselves, as former years we have been receiving all the way from 10 to 25 cars of peaches and grapes and since this robbery has been in existence we are practically shut out from doing any business in the State of Michigan, as we could not stand the charges and meet competition, for the reason that all the shippers in Milwaukee and points on the lake receive their stuff by boat across the lake; therefore would not be obliged to pay any refrigerator service, where, on the other hand, we could not ship in this way, as the excess handling on perishable stuff results in too much loss and shrinkage. I think since 1902 we have had only two or three cars of peaches. Of course the charges on the cars of grapes was not as high as that of peaches, and we continue to handle that line from Lawton. Of course the regular rate—no doubt you are familiar with—from Michigan points to our point here is 55 cents. On 20,000-pound cars the additional refrigerator service made the charge 75 cents per 100 pounds, or 7½ cents per 10-pound basket of peaches. Taking this cost and adding it to the price of the package very nearly made the basis to a selling price. I am glad to see you making progress along this line, and I am sure that if we get justice there is no question but what we will win out all right. I will write a letter to the secretary to-day.

Hoping this letter will reach you while in Washington and that it may be of some assistance to you, I remain,

Yours, very truly, H. T. LANGE.

	Car service.
Chicago, Milwaukee and St. Paul Railway Company, 20,000 pounds, 25 cents, $150	$40.00
Car K. C. F. E. Pro. 426. Car 21046. September 12, 1902. W. B. 42770.	
Chicago, Milwaukee and St. Paul Railway Company, 20,000 pounds, 25 cents, $150	40.00
Car F. G. E. Pro. 238. Car 15004. September 8, 1902. W. B. 41738.	
Wisconsin Central Railway Company, 20,000 pounds, 25 cents, $150	40.00
Car F. G. E. Car 17921. Pro. 312. September 11, 1902. W. B. 347.	

	Car service.
Chicago, Milwaukee and St. Paul Railway Company, 20,000 pounds, 25 cents, $157.45	$40.00
Car 14676. Pro. 534. September 15, 1902. W. B. 43440.	
Chicago, Milwaukee and St. Paul Railway Company, 21,297 pounds, 25 cents, $157.13	40.00
Car 15226. Pro. 763. September 20, 1902. W. B. 45274.	
Wisconsin Central Railway Company, 21,660 pounds, 25 cents, $159.13	40.00
Car 18024. Pro. 1124. Car G.G. E. October 3, 1902. W. B. 3795.	
Wisconsin Central Railway Company, 20,000 pounds, 25 cents, $150	40.00
Car G. G. E. Pro. 1125. Car 12152. October 3, 1902. W. B. 3945.	
Wisconsin Central Railway Company, 20,870 pounds, 25 cents, $154.79	40.00
Car 20329. Pro. 1101. October 1, 1902. Car K. C. F. E. W. B. 1981.	
Wisconsin Central Railway Company, 20,000 pounds, 25 cents, $150	40.00
Car 44333. Pro. 983. August 28, 1902. Car F. G. E. W. B. 4456.	
Wisconsin Central Railway Company, 20,000 pounds, 25 cents, $150	40.00
Car 16491. Pro. 984. September 30, 1902. Car F. G. E. W. B. 4899.	
Wisconsin Central Railway Company, 20,000 pounds, 25 cents, $153.75	40.00
Car 18710. Pro. 986. September 8, 1902. Car F. G. E. W. B. 5471.	
Wisconsin Central Railway Company, 21,212 pounds, 25 cents, $156.67	40.00
Car 16508. Pro. 417. October 14, 1902. Car F. G. E. W. B. 75.	
Wisconsin Central Railway Company, 23,266 pounds, 25 cents, $167.97	40.00
Car 25417. Pro. 417½. October 14, 1902. Car K. C. G. E. W. B. 252.	
Chicago, Milwaukee and St. Paul Railway Company, 20,000 pounds, 25 cents, $150	40.00
Car 1888. Pro. 932. September 24, 1902. W. B. 46306.	
Wisconsin Central Railway Company (car apples), 24,000 pounds, 28½ cents, $110.64	24.00
Car F. G. E. Pro. 976. September 1, 1902. Car 17615. W. B. 672.	
Wisconsin Central Railway Company (apples), 30,880 pounds, 28½ cents, $115	27.00
Car 20764. Pro. 348. September 11, 1903. Car K. C. W. B. 585.	

FARMINGTON FRUIT AND BERRY ASSOCIATION,
Fayetteville, Ark., February 20, 1905.

Mr. E. M. FERGUSON,
Duluth, Minn.

DEAR SIR: I take this opportunity of expressing my gratification at the result of recent proposed legislation touching refrigerator car lines. I trust that it will be pushed through the Senate soon. From a growers and shippers' point of view the future in the fruit business looks exceedingly gloomy. We are forced to use the Armour cars, as the Frisco System (on which we are located) will haul no others, thereby leaving us absolutely at the mercy of the Armour people. At the prices the grower can realize for small fruits the railroads and refrigerator car lines get everything there is in the deal. We do not want something for nothing, nor are we as growers disposed to impose on the railroads that haul our product. But at the same time we feel that the freight and refrigeration that we are forced to pay is too high. I inclose a letter from Mr. Steele, agent, Armour Car Lines, which explains itself. Thanking you for the interest you have taken in this matter and hoping that you will meet with further success, I am,

Yours, truly, C. W. APPLEBY.

FRUIT GROWERS' UNION, OF SARCOXIE,
Sarcoxie, Mo., ——— ——, *190—*.

Mr. E. M. FERGUSON:

We have just received this a. m. the new refrigeration tariff No. 574 for use this season, and having understood that the Armours was going to reduce the rates this year we rather expected same; but although there is some reduction only two points—"Minneapolis and St. Paul reduced 1 cent per crate, 510 crates per car"—that affect us any, as we seldom if ever use any of the other points that show reduction. We will show the different rates from Sarcoxie to St. Louis and Chicago:

A car of wheat (40,000 pounds minimum) to St. Louis costs $64; Chicago, $84.

A car of cattle (22,000 pounds minimum) to St. Louis costs $44; Chicago, $63.30.

A car of strawberries to St. Louis costs $134.30; Chicago, $176.80.

The refrigeration on strawberries to St. Louis is $40.80. They should go through within fifteen hours, with a "big" estimate of 5 tons ice to start with and 2 tons re-ice at Monett, costing not to exceed $21.

In going to Chicago it would take only about, say, 3 tons re-ice at St. Louis, making 10 tons at $30, while they charge $56.10 refrigeration.

Now, why do we have to pay any more for hauling a car of berries to St. Louis or Chicago than a car of cattle? The difference in price is $49.50 more for berries than the cattle to St. Louis; the berries costing $93.50, the cattle, $44 to St. Louis, or more than double the cost. To Chicago the berries would cost $120.70, and the cattle $63.30, or almost twice as much for the berries as the cattle. They both go as fast freight, but we know of instances when berries have been sidetracked to let cattle go by. We can not get any transportation with berries, but with the cattle we do; and if shipping to Chicago the railroad switches the car into the stock yards at St. Louis, the cattle are unloaded for twelve hours and fed, then the railroad loads them up again and continues to Chicago. Now, is it any more trouble for the railroad to set-to and re-ice at St. Louis than for unloading?

Now, our point in the above is this: The railroads, when they furnished their own refrigerators, charged freight enough to cover all cost of icing their cars, and then charged no icing.

Private cars stepped in and added their cutthroat prices and also compelled the railroads to pay a rebate, thereby compelling the railroads to continue the high freight rate to pay rebates to the car lines.

Last season it cost $192.10 to ship a car of berries to Milwaukee, freight and refrigeration. The railroad agent informed us that the cost on a car of beer from Milwaukee to Sarcoxie was less than $60. Why the difference, or at least so much difference?

Private cars are going to drive southwest Missouri and northwest Arkansas out of the fruit business. The time has come when something has got to be done, and we dare say that if a petition was submitted to the fruit growers of this section and the United States, we will say, praying that the private car lines be thrown in the gutter

and trampled to death, that every grower, no exceptions except those employed or hired by the lines, would sign it.

An agent wrote the secretary this spring wanting him to write or wire his Congressman not to act against the car lines, or words to that effect. The secretary wrote the agent that he would do no such thing; that the private car line were a cutthroat and blood-sucking devil, and although we were within their grasp now and they could strangle us, he thought their life was short and they would be compelled to give up the ghost within a year.

As we do not wish to tire you by writing too much, we will conclude by saying away with them, and if you need any help, either evidence or financially, we think you will have no trouble getting it in this section. Will say if our growers here around Sarcoxie had received the money themselves that the car line took from them last year our berry fields would have been cultivated this season, whereas they are not and are not going to produce half a crop.

Yours, respectfully,

CLIFTON MCNALLIE.
D. MCNAILLIE,
Per C. McN.
D. CRAMER,
Per C. McN.
J. B. WAGNER.

IOWA FRUIT JOBBERS' ASSOCIATION,

Des Moines, Iowa, March 3, 1905.

Mr. E. M. FERGUSON,
President Western Fruit Jobbers' Association,
Duluth, Minn.

DEAR SIR: As secretary of the Iowa Fruit Jobbers' Association, I beg to advise you that at the meeting held at Cedar Rapids, Iowa, Saturday, February 25, the following resolutions were unanimously adopted.

Please take note of same, and trust you will accept the obligations which it imposes.

"Whereas it has been fully demonstrated to us during the past five years that private ownership of refrigerator cars has materially increased the cost of transportation of fruits and produce, increasing the cost to consumers and lessening consumption of commodities so transported:

"*Resolved*, First, That it is the unanimous opinion of the members of the Iowa Fruit Jobbers' Association, at meeting held at Cedar Rapids, Iowa, February 25, 1905, that everything possible shall be done by the Iowa Fruit Jobbers' Association to foster and encourage national legislation toward eliminating private ownership of refrigerator cars and toward compelling railroads to own and furnish proper refrigerator equipment for proper transportation of all fruit and produce, and for which the railroads shall publish a tariff, including icing and all carrying charges.

"Second. That we hereby elect Mr. E. M. Ferguson, of Duluth, as

our special representative before all State and national legislative bodies, with instructions to do everything possible to carry out our ideas."

Yours, very truly,

IOWA FRUIT JOBBERS' ASSOCIATION,
Per A. U. CHANEY, *Secretary.*

VAN BUREN HORTICULTURAL ASSOCIATION,
Van Buren, Ark., March 3, 1905.

The KNUDSEN-FERGUSON FRUIT COMPANY,
Duluth, Minn.

GENTLEMEN: It is with pleasure that this association notes the great fight that the commission merchants generally and the league especially have inaugurated against the enormous charges for the transportation of freight by the refrigerator-car lines. We feel that you are all doing the fruit producers throughout the country a very great favor and appreciate and indorse your action most heartily. It takes about 10 tons of ice to refrigerate a car from Van Buren to your market, and, as I understand, the contract price for this ice is $3.75 a ton, yet we are charged $90 for the icing charges on this car. During the season of 1904 Van Buren shipped about 350 carloads of refrigerated fruit, and this extortion bears very heavily upon the producers, especially when the fruit is cheap, and considering the chances they have to take on markets breaking, and oftentimes the fruits decaying in transit. While we think that every legitimate business should bear a fair return on the money invested, yet we believe profits of the refrigerator-car lines must be enormous. It seems by the contracts of the different roads, let to the different car lines, the growers have no choice in the matter as to cars, and while one car may not have any better merits than the other, yet at the same time we believe it would be both to the railroad companies' benefit, as well as to the shippers, to let the different car lines compete on the different railroads for the fruit. However, we have no special complaint to make of the service, as it is reasonably good, but we think that, with the present charges, they should certainly guarantee the arrival of the fruit on schedule time and in good condition. We certainly indorse our President's stand in the matter, and only hope that our Senators may aid him in his fight against the extortion of the refrigerator lines. Wishing you every success in your undertakings and assuring you of our hearty appreciation, I am,

Yours, very truly,

J. A. BARRET, *Secretary.*

PORTER LAND AND WATER COMPANY,
Los Angeles, Cal., February 9, 1905.

KNUTEN FERGUSON.

GENTLEMEN: Absence prevented answering your wire of 2d. I have sold out the Porter Land and Water Company, and shall not

handle their fruit any longer. With your permission I will be pleased to recommend you to them.

I received a report of your Mr. Ferguson's appearance before the Congressional committee on the transportation question, which he so ably presented. I concur with him fully, thanking him for his efforts against the damnable conspiracies that beset us upon every hand.

Yours, respectfully, G. K. PORTER.

PAWPAW, MICH., *May 13, 1905.*

E. M. FERGUSON, Esq.,
Washington, D. C.

DEAR SIR: After leaving the stand in Chicago the other day I had no time to see you again. On my return home I find that no fruit growers feel able after paying Armour's charges for the last two years to undertake the trip to Washington at their own expense, which probably will account for the slim attendance, but I hope you will be able to so present the case to the Senate committee as to convince them of the injustice of the Armour charges and give us some relief.

Unless we do get relief from the Armour people it will practically kill the fruit industry in this section.

The high rate charged by the railroad companies is a sufficient handicap without having to pay three times the cost of icing to the Armour people.

Last season as soon as the New York grapes came into the market it practically cut out the demand for ours. I received several communications from our customers stating that they could buy New York grapes for the same money and lay them down at their place for less money on account of icing charges than they could from here—many of them in the State of Michigan.

The Armour people tell me that I am the only man who is kicking against their charges, but I am yet to find a fruit grower who is satisfied with their exorbitant rates.

Any information you may want in regard to the difference in charges can be had from the Interstate Commerce Commission, as they have what papers I had with me at Chicago.

Hoping that you will be able to convince them that we must have some relief, I am,

Yours, etc., W. C. WILDEY.

THE MODEL STRAWBERRY ASSOCIATION,
Monet, Mo., May 7, 1905.

Mr. E. M. FERGUSON,
Secretary, Duluth, Minn.

MY DEAR SIR: I received your valued favor some days ago. Would have replied sooner, but have been waiting for the documents which you say you mailed me under separate cover, all of which I have never received. That certainly would be interesting reading matter for me. I would be very glad to receive same. Without having the

pleasure of reading contents of above, I can say to you now that I do not know of one single grower who is satisfied with rates we have been paying. I am quite sure that I could furnish you at least 1,000 names of fruit growers who will verify my statement. Fruit growers certainly owe you a debt of gratitude for the manly disposition you have shown in the fight against the Armour Car Lines for reasonable rates. I firmly believe that unless the fruit growers of this section receive some speedy relief from the exorbitant rates they have been forced to pay the strawberry industry will dwindle down, to the detriment of all concerned.

Car-lot shipments will begin here about the 15th instant. I will keep you fully advised of the situation here, and trust we may be able to do considerable business with you. Awaiting your further pleasure, I am,

Yours, very truly, E. A. O'DWYER, *Secretary.*

THE ROGERS SHIPPERS' UNION,
Rogers, Ark., March 20, 1905.

Mr. E. M. FERGUSON, *Duluth, Minn.*

DEAR SIR: I take this opportunity of expressing my gratification at the result of the recent proposed legislation touching refrigeration and refrigerator car lines, and trust that it will be pushed through the Senate soon.

From a grower's and shipper's point of view the future in the fruit business looks exceedingly gloomy.

We are forced to use the Armour car, as the Frisco System, on which we are located, will haul no others, thereby leaving us absolutely at the mercy of the Armour people.

At the price the grower can realize for small fruits the railroads and refrigerator car lines get almost everything there is in the deal.

We do not want something for nothing, nor are we as growers disposed to impose on the railroads that haul our products to market, but at the same time we feel that the freight and refrigeration that we are forced to pay is too high.

Hoping that we will soon have a national law so as to give us some protection, as at present we are imposed upon by high rates and refrigeration charges.

Yours, very truly, J. W. STROUD.

VAN BUREN HORTICULTURAL ASSOCIATION,
Van Buren, Ark., April 1, 1905.

Mr. E. M. FERGUSON, *Duluth, Minn.*

DEAR SIR: Replying to your valuable favor of recent date, wish to say that I am reading Russell's article on "The Great Yellow Car," in Everybody's Magazine, and I appreciate the honesty and the clear-cut way in which the writer is exposing this gigantic trust and extortion, and I wish to assure you that, so far as the growers of this community are concerned, we have done everything we could do to get the rates reduced or the icing charges cut in two. We have taken

the matter up through the freight department of our railroads time after time, and also have asked the division freight agents of the A. R. T. Car Company and the Armour Car Lines for a slight reduction in their ice charges. We find these people all polite, but they eventually tell us that they have done all they could, without effecting any results. I hardly know what can be done; nothing but the National Congress, and it alone, will ever remedy the evil. Hope, however, that when the work is done the Western Fruit Jobbers' Association will have their part of the praise and glory for the destruction of this monopoly.

I noticed in the Fruit Journal and daily papers your statements in Washington before the committee, and have kept up with the matter as best I could, and I feel sure that your efforts in the matter will be fruitful.

Yours, truly,

J. A. BARRET, *Secretary.*

SAN ANTONIO, TEX., *April 4, 1905.*

Mr. E. M. FERGUSON, *Duluth, Minn.*

DEAR SIR: I have noticed your several articles in the produce journals in regard to the Armour Car Lines. I wish to advise you that shippers in this country are paying the same exorbitant charges that have formerly prevailed in Michigan and other points north. For instance, it costs me to furnish sufficient ice to deliver a car cabbage to Texarkana, Tex., about $25, and I have shipped many cars there this season where the ice consumed did not cost me but $15; however $25 is the maximum. For shipments from one point to another in Texas we are permitted to supply our own ice, but on interstate shipments originating in Texas we are compelled to accept the tariff of the Armour Car Lines. For instance, from Shreveport, La., to Corpus Christi the minimum charge for refrigerating a car cabbage is $50.40, and, as I have above stated, the maximum cost to me for a car going to Texarkana, Tex., is $25. It is 496 miles from Corpus Christi to Shreveport, and 539 miles from Corpus Christi to Texarkana. You will note that we have to pay the Armour Car Lines $25.40 for the privilege of using their cars.

I have taken this matter up with the railroad commission of Texas, but they say that they are powerless to do anything to assist us in reducing this rate on interstate shipments. I have a lot of data in my office that I would be glad to furnish you or any committee that is compiling facts and figures on this subject, for I would like to see the private car lines either compelled to discontinue business in this State or reduce their charges to a reasonable profit.

Yours, truly,

ROY CAMPBELL.

STATEMENT OF HON. ROGER S. POWELL.

Senator KEAN. Please state your name.
Mr. POWELL. R. S. Powell.
Senator KEAN. And your residence.
Mr. POWELL. Duluth, Minn.

Senator KEAN. Your occupation?

Mr. POWELL. I am engaged in the practice of the law, and I appear here as attorney for the Western Fruit Jobbers' Association. What I have to say will be very brief, indeed, and relates to what we desire and what we think is the simple and direct way to get at it. It relates to the privately owned freight cars and the practices under such ownership.

The interests in whose behalf I am authorized to speak desire that the extortionate charges and discriminations and the rebates and other abuses, which have been shown in detail to this committee of the United States Senate to exist, and which have been further shown to be the issue of a yoking together the common carrier and the owner of the freight car in a closer union than should exist between any private interest and carrier, be cut off, and while not wedded to any particular method, we believe that the way to do this is to banish the privately owned freight car from the common carriers' rails. This looks to us like the direct, simple, fair, and effective way to cut out these private freight-car abuses.

The legislative action which this view contemplates is directed solely to the common carrier engaged in interstate commerce, and takes no cognizance of these elusive and ambulatory car lines. The carrier has its feet planted on the ground and it can't get away. It must either obey or disobey both the legislative commands to do and the legislative commands to desist from doing this or that particular thing, and it is to be assumed that it will obey. At all events, it can't get away, and if it disobeys it must take the consequence of such disobedience.

On the other hand, Federal legislation directed against the private owner of a private freight car at the very threshold is obnoxious to the objection that such legislation is outside the jurisdiction of Congress. You can't reach the private owner—quoad owner. He must himself first engage in some interstate use of his car before you can reach him, and when you have enacted legislation reaching such uses, if not satisfactory to the private-car owner, he will change his practices in such way as to elude the statute, or if not that it is always open to him to get out of the business, leaving the service to be performed by the common carrier. This result would be eminently satisfactory, so far as it goes, but it does not go far enough.

Senator CULLOM. Do you think these cars are now under the interstate-commerce law?

Mr. POWELL. I do not; and I think there is no way of putting them under it, except as they may engage in some interstate-commerce transaction, and even then their feet are not upon the ground. You legislate for that practice to-day, and if it is not satisfactory all they have to do is to get out from under it.

Senator FORAKER. If they get out from under, then the railroad has to take up the business, and that is what you want?

Mr. POWELL. That is what I want, and that is the remedy to which I am directing the attention of the committee; and I wish to speak now particularly as to the things that we desire. First, we want a rate at so much per hundred pounds. That principle of law was established as long ago as 1887, when you enacted the interstate-commerce law, and it has been adhered to ever since; but here is a special

practice that has grown up that is a complete and absolute departure from that well-defined principle, so that it is impossible from an inspection of these rates, as has already been testified to, for anybody to tell what it will cost him to transport a carload of refrigerated products from one point to another.

There never were two train loads of iron ore or any other product the furthest from perishable carried from one point to another at exactly the same cost. There is a variance at different seasons. In the event of snowstorms or something of that sort these variations might be very great; but that has never been held to be a reason for making a flexible charge for the service. So also the men handling the business of transporting refrigerated products know the ground, they have all the data from which to compute the average cost of that service, and there is no inherent difficulty and no reason against, and every reason for, having that service performed and provided for in the freight rate, the same as any other carriage service.

Now, I want to say, as an illustration of that, that it is entirely practicable and feasible and the railroads have done it heretofore prior to these very recent years. The railroads in the Michigan fruit belt formerly carried their traffic to Boston and to Duluth. I know Duluth is a small place, but I do not want to seem to slight the bailiwick of the Senator from Minnesota. These railroads charged no more for these things than simply by fixing a higher freight rate at so much per hundred pounds. In that way the cost of this refrigeration was absorbed in the freight rate. Now, we ask a compulsory return to that method. In this particular that is all we ask.

The other day, before the Interstate Commerce Commission, when the Michigan Central Railroad indicated their purpose to provide their own cars and furnish the refrigeration hereafter themselves, they indicated that in the future they would charge for the ice at $2.50 per ton, according to the quantity of ice used. There again you have an indefinite element. Assuming, if you will, that the railroad will honestly, fairly, and squarely carry that out, the dealer in the product which is being transported still has the uncertainty facing him of the quantity of ice which will be used. The matter of a delay may increase the cost a very great deal by reason of extra ice, and the matter of temperature may increase it and change it, in the regular time consumed in the traffic.

Senator CULLOM. Could the railroads become any more certain about what they would charge if they were in the business than you say the private-car companies do now?

Mr. POWELL. I do not believe I quite understand your question.

Senator CULLOM. I say if the railroad owned the cars and was carrying on the business, and you asked the railroad company how much it would cost for ice they could not tell you unless they were sure what they could get the ice for and sure of making the trip in a given time, could they?

Mr. POWELL. That is just the point I am arguing about. It is a question of averages. That variation applies to all traffic, but it is susceptible of being averaged up, just as all their traffic is susceptible of being averaged up, and having placed thereon a fixed rate so that it shows in the schedule, so much per hundred pounds for a carload of peaches under refrigeration; and if any considerable quantity

should be carried without refrigeration it would warrant a different classification and a different price, but that should be at so much per hundred pounds, leaving nothing flexible or varying in the charge to the shipper.

Now, right in that connection, as an illustration, the Armour Car Lines in these 30 contracts do that very thing. They bunch it.

Senator KEAN. Does not the shipper know when he ships his fruit what he is going to pay?

Mr. POWELL. Using the facilities which the interstate-commerce law places before him for knowing what his ordinary freight charges will be, he does not know what the charge is going to be on the fruit; no, sir.

Senator KEAN. As a matter of fact, if you ship a carload of peaches you would not know how much you were going to pay on that carload?

Mr. POWELL. No; I would not. That is the point I am getting at. I would have great difficulty in learning it. Let me say right here that I do not assume to speak at first hand of the actual practices, but I am relying on the record that is here before the committee and the hearings before the Interstate Commerce Commission.

Senator KEAN. The testimony we have had before us in almost every case was, I think, that the shippers always found out how much they were going to pay.

Mr. POWELL. After a very great deal of delay and expenditure of time and trouble and various telegrams sent to and fro——

Mr. FERGUSON. May I answer that, please? It is correctly stated by Judge Powell that it is impossible to determine with any degree of definiteness the cost of transportation from one point to another where refrigeration is involved, except it may be between well-known points, and you learn that cost by experience. For instance, the railroad tariffs do not indicate that this additional charge will be made for refrigeration, as a rule. Neither do the railroad tariffs indicate what roads are under contract with the Armour Car Line.

Senator KEAN. Do not the Armour company print the tariff just the same as the railroads do?

Mr. FERGUSON. But they are not kept on file throughout the country in the railroad offices as the railroad tariffs are. Neither is it obligatory on the part of the railroad companies to do so, and, in fact, they do not.

Senator KEAN. Did you ever find any difficulty in getting a printed tariff sheet when you wanted one?

Mr. FERGUSON. I can give you a list of examples.

Senator KEAN. Did you yourself ever have any difficulty?

Mr. FERGUSON. Yes, sir.

Senator KEAN. Where?

Mr. FERGUSON. They are of record in my former testimony. I might cite a case that recently came to my observation in St. Paul, where a gentleman wished to move a car of cabbage from Mobile, Ala., to St. Paul.

Senator KEAN. A carload of cabbage?

Mr. FERGUSON. Yes, sir; new cabbage under refrigeration. He made application to three different railroads for the freight rate or transportation charge on cabbage from Mobile to St. Paul in order

that he might ascertain the cost of it laid down to him. At the expiration of two days one railroad quoted him a rate. They all quoted to him immediately the freight rate, but at the expiration of two days one railroad quoted to him a rate of $55 per car for the refrigeration. Something like a week after that time I was talking with him, and the other two roads had not yet been able to give him any information with respect to refrigeration.

Senator KEAN. Cabbage is not transported very largely in refrigerator cars, is it?

Mr. FERGUSON. Yes, sir; new cabbage is; very largely. In the meantime the car of cabbage arrived in St. Paul, and the refrigerating charge on it in place of being $55 was $32.

Senator KEAN. I suppose you did not object to that, did you?

Mr. FERGUSON. Why, we do not think it ought to have been anything other than provided for in the tariff itself—that is, other than provided in the published tariffs. We take the position that beyond the published tariffs no charge at all is admissible. We are willing to pay to the railroads what refrigeration is worth, but we believe the legal rate is the published rate.

Senator KEAN. That is, you do not believe that there ought to be any charge for refrigerating at all.

Mr. FERGUSON. Other than that provided for in the classification for refrigerated products. Refrigerated products should be charged a higher rate of freight at so much per hundred pounds than the same products transported under ventilation or in box cars, the object being that we may know what the transportation charge will be and determine with accuracy what it will cost us to move a car of refrigerated products from one point to another. And I wanted to say in that connection that nowhere is the information obtainable as to what roads the Armour Car Lines have contracts with. We know that wherever they do have contracts a high refrigerator charge will be exacted, but when we go to look up a rate there is nothing that will indicate, and neither do the railroad men at the points where we seek this information know where these contracts obtain. We do not know whether to look to the Armour Car Lines for that information or where to look for it. We want to have that information contained in the railroad tariff itself.

Mr. POWELL. Now, as a further illustration on that point in practice, about the fixed charge, the Northern Pacific, furnishing a refrigerator service of its own, has a charge of so much per car, so that the only difference is one of bookkeeping and the difference of enabling the shippers to see what the schedule is—what the whole charge is. I mean, we prefer a charge of so much per hundredweight instead of having a freight rate and an extra charge of so much per car for refrigeration.

Now, I think I have seen some misapprehension here of the actual and practical situation, in inquiring about car lines and private cars and these contracts. These contracts involve a great deal more, if the committee please, than the mere letting of the car to the railroad. If that was the be-all and the end-all of the matter it would not present half the case that we have as a grievance. But these car lines are actually engaged in merchandising in these articles—a very large number of them. They are extremely strong financially,

and they always can engage in this merchandising over the entire field. Take, as an illustration, the actual existence of contracts with 30 different roads and observe the conditions of those contracts, one of which is that the car-line people are to be kept advised daily of the movement and the destination and the consignee and the contents of these various cars, so that in his central office every morning the manager of the car line has a chart of the whole situation. You can see that this method of performing this service puts a private institution right upon the rails, giving them the benefit of complete information and all the privileges of a carrier with none of the corresponding duties or restrictions of a common carrier. So these car companies are capable of actually covering the entire market and controlling it, both at the growing and shipping end and at the consuming end.

So we want this service performed in the future as it formerly was prior to very recent years, by the railroads themselves. It is a more economical proposition, if you please, than the one now obtaining under the Aromur contracts. The roads have the icing stations already there. They had them before the Armour Car Lines came on the ground. They have the labor there, used for other purposes, and available for this extra service, as it always was used. The refrigeration superintendent of the Northern Pacific testified the other day that all that service was performed by their section men in charge of an icing foreman at each icing station, so that this army of 33,000 men that the Armour Car Lines tell about, if they are real and not mythical, are an army of supernumeraries, and constitute an extra burden and an extra charge upon this traffic. There is no warrant whatever for their existence.

As a particular illustration, Mr. Patriarch, of the Pere Marquette Company, was asked why these contracts were entered into, and he put it solely upon the ground of their inability to get cars otherwise. We put the question to him about his duty to furnish cars himself and he said that Armour and Company were the only people. Something was said here about these contracts being let in competition. He said that the Armour Company were the only people in the field that he knew of who could furnish these cars, and that they said to him, "We will not let you have the cars unless we have this service of refrigeration, to be performed by us, the compensation for the service to be paid to us, you collecting for it, and it shall be so much," fixing the price agreed upon between them. Oherwise, he said, they would not do this.

Now, one further thought in that connection, gentlemen. I asked the Armour witnesses at these hearings why they wanted to go on and do this service, when it seems to be going up so high; why they were not content with leasing these cars to the railroad at so much a mile. The first suggestion was that that would not pay. They spoke about the delays of the cars and the handling them, having them parked beforehand, and so on, that that arrangement was not satisfactory, and therefore it required this service. But I said to them, "Why don't you increase the mileage charge, if it is not enough?" They said that, considered strictly as a mileage charge, it was enough; at all events the railroads would not pay any more. I pressed the question. If the compensation was the whole consideration, if three-

fourths of a cent per mile was not enough for the car, I could not see why they did not exact more, and they said there was something further in it; that they had to protect the reputation of the Armour cars. That, in the last analysis, was what they came down to as a warrant for insisting; but there was no denial of the fact that they did say to the railroad company, "We will not lease you these cars at so much, or at any sum, and let it go at that and release our hands from them." They insisted that they should perform this refrigerator service, and that they should be informed at all times daily of the movement of the cars.

Now we want this service performed by the carrier himself, because it has been accepted as perfectly practicable and feasible, and the record, I insist, shows it to be a more economical way to do the service than that which now obtains wherever these exclusive contracts are in force.

Now, one word, if the committee pleases, on the question of amending the present law. It has been held, I think, that there is a common law of the United States, and the rule of common law is familiar that the carrier must furnish the equipment for all that he purports to carry. The interstate commerce act is declaratory of that same principle, but the remedy there is merely a matter of remedy in damages, and it is not practicable; it serves no practical benefit. I do not believe it is worth while to enlarge upon that. What we would like in that connection, and what seems to me a fair and just proposition, is, in addition to that matter of actual damage incurred that on proper notice to the carrier to have a car at a certain place, and upon his failure to have it there, there should be some penalty attached, just enough to make it to the interest of the carrier to perform the service. That, it seems to me, would be the necessary spur to fix that feature.

Now, may I speak a word about the apparent theory of the pending bill? I spoke of a misapprehension. There is a bill that has been introduced, and I suppose it is before the committee, to regulate private-car lines. It is directed against the owner of the private freight car, against those who operate private freight cars, and only against those two classes of people.

Senator FORAKER. Can you give us the number of that bill?

Mr. POWELL. Senate 6709.

Senator CULLOM. What is the title?

Mr. POWELL. "A bill to amend an act entitled an act to regulate commerce, approved February 4, 1887, and to further prevent the payment of commissions or rebates on freight."

Senator FORAKER. What are you reading from?

Mr. POWELL. The title of that bill.

Senator FORAKER. What is the document you have in your hand from which you are quoting the title?

Mr. POWELL. A hearing before this committee.

Senator CLAPP. That bill was referred to a subcommittee.

Mr. POWELL. The sections of this act apply to any person or persons, copartnership or corporation, engaged in the operation of private freight cars.

Section 2 provides that the owner or operator of any such private freight car engaged in interstate transportation is hereby declared to be a common carrier.

I do not think there is any question or any room for doubt that the owner of a private car, in so far as he is such owner, is no more within the jurisdiction of Congress than the owner of any other piece of personal property, and I would not suppose that any other opinion would be entertained. Now, as to the operator of a private car, it does not, in my judgment, describe any one of these people—the private car line owners—nor does it touch a single practice of which we are complaining.

Senator CULLOM. You come here to urge their being placed under the interstate-commerce law—that is your contention, is it not?

Mr. POWELL. No, Senator; my contention is that they be excluded from consideration; that your legislation be directed against the common carrier, the railroad. That is our position. In these hearings before the Interstate Commerce Commission I have protested against any recognition of the private car lines, holding that the problem is one between the complaining public and the railroads.

Senator CULLOM. I should like to find out just what you want to do.

Senator CLAPP. That is an interesting question, Mr. Powell, but the subject under consideration by the committee is how to reach the difficulty.

Mr. POWELL. Well, I will answer that. The theory is to prevent the common carrier from hauling upon its rails a privately owned freight car, and I have in mind this, that perhaps that provision should go into effect at some time in the future, but that it should now be declared to be the fixed policy of the law.

Senator FORAKER. And then your second proposition is that the common carrier shall be required to provide itself with enough refrigerator cars to perform the service?

Mr. POWELL. Yes; that the duty be so specifically placed on them as to make that a working law.

Senator FORAKER. Each and every common carrier to provide cars enough to do the business on its road?

Mr. POWELL. Yes; but I have not in mind that that would be based on the assumption that every carrier would be required to have as many cars as the products of his own road would originate—in practical operation, I mean.

Senator FORAKER. How would you meet that case?

Mr. POWELL. I think this interchange of cars between roads would be practically the same as it is now with ordinary freight cars.

Senator FOSTER of Louisiana. You would require them to furnish all the facilities, would you not?

Mr. POWELL. Yes.

Senator FORAKER. I thought your proposition was that they should have cars at the places along their lines where the cars were needed, and have them there promptly and in sufficient quantity to do all the service that was necessary, and that failing in that, they should be subjected to a penalty.

Mr. POWELL. Yes, Senator, you correctly state my proposition.

Senator FORAKER. It would be a little hard, would it not, to require them to keep those cars, and yet be dependent on exchanging cars with other roads, and be subjected to a penalty for failure to furnish sufficient cars promptly?

Mr. POWELL. I think we are talking of something that always has

been the law in practical working, and I do not think it will be shown that there is any practical difficulty. If each carrier has a certain proportion of that equipment, the interchange will enable them to do the whole thing. In other words, if there are a hundred cars to be moved, and there are three carriers, each provided with thirty odd cars, that would take care of the traffic, I think; but that is a question of detail.

Senator FORAKER. Each carrier being separate and independent from the others, would you have us compel them by law to make an interchange of cars?

Mr. POWELL. No; I interjected that as a practical consideration, simply stating that in my judgment the burden would not be as heavy as on its face it might seem to be.

Senator FORAKER. I understand; but here is a very serious question. A road might have use for a thousand cars for thirty days or for three months, and no use at all for a thousand cars during the other nine months of the year.

Mr. POWELL. Well, Senator, as I said, I do not undertake to speak at first hand. I speak from these records; but I think it will develop that, over much of this territory, it is practically an all-the-year-round traffic, or at least ten months in the year, in one form or another, and that it is a practically constant quantity. There may be some exception to that in the Georgia area, but even there it is a gross exaggeration to consider it as a matter of only two or three months in the year for the use of refrigerator cars, as I am given to understand.

Senator CULLOM. It occurs to me that if you get the legislation you want, you will be in danger of finding yourselves without the accommodations that you are getting now for the transportation of freight from California to Duluth, and to Boston, and all over the country.

Mr. POWELL. That is not our idea, Senator.

Senator KEAN. What would happen, for instance, if there were a railroad line built, and at the present time there were no fruit cars on that line, and some enterprising people should go into that part of the country and plant orchards, and all of a sudden it should be found that they had something to ship out? How would you get their fruit transported for them?

Mr. POWELL. Well, I do not suppose the committee would have any misgiving about the interest of the railroad in toting that stuff to market. That would apply to them as it does to existing roads.

Senator KEAN. Well, but if it were only a new industry that had just developed, perhaps the railroad company would not feel justified in putting a large investment into these cars until they thought it was going to be a permanent thing. If they thought it was going to be permanent they might do so.

Mr. POWELL. Well, if danger was to be apprehended from that source, I think the duty ought to be clearly imposed upon the railroad to take care of such a situation as that.

Senator FORAKER. Now, if we should not be able to overcome these difficulties that we all recognize—you as well as the rest of us—is there any other remedy you would suggest, except to wipe out the private car line business altogether?

Mr. POWELL. I have thought considerable about it. Of course, I

speak diffidently on this subject, gentlemen, but I have given it considerable thought, and it did seem to me that this question was capable of this solution. I have not quite fully stated the reasons why I think this plan is feasible and conservative. There are other considerations.

This is not a theory, but a condition. Here you have the owners of these private cars controlling an immense tonnage. For most of them it is absolutely large, and for all of them it is relatively large. That is, the smallest private-car owner is a big duck in his own little puddle. He is there and he is an impelling force toward the railroads, and if such a law as this should be passed, prohibiting the carrier from hauling private freight cars, there would be no danger that this property would be left on the hands of the private owners, I think; but if there should be, put that in the remote future, far enough to satisfy the apprehensions of the most conservative. I do think that ought to be done.

Now, these things have come up in one shape or another. Testimony was given by Mr. Midgley before the Interstate Commerce Commission about there being some controversy between the tank line car owners and the railroads as to what their mileage should be, and when the car owners were not satisfied with the suggested payment, they said to the railroads, "If you can not pay us this amount for mileage, then take over our cars." There did not seem to be anything insuperable in the way of the railroads taking the property. Now, answering the question of the Senator, I think, as I said before, that beyond any doubt this whole service ought to be performed by the railroads, and the entire charge ought to be stated in the freight rates, at so much per hundred pounds for the whole thing. In practice you can not transport a carload of peaches from Michigan to Boston without refrigeration. These terms, transportation, and carriage, and so forth, in the interstate-commerce act, are used in the trade sense, in the commercial sense, and to take them and tote them there without refrigeration is not to transport them in any commercial sense. So it is duty clearly connected with commerce, and one clearly incumbent upon the railroads, and perfectly competent to be put upon them.

Now, if it is insisted that they do it directly, the only objection to that—that is, in that it would not go far enough—is this, that if these private cars are still leased from a great, mammoth concern, covering the whole territory and engaged in merchandising, the manager of that concern would still have every morning this chart showing the movement over the whole country of these perishable products. That objection would be left, but I have offered what I thought was a plain, simple, and fair remedy. Just what would take place about that matter as to information concerning the movement of these perishable products I do not know, but the utmost I can think of would leave that objection open. I do think that is the greatest danger to-day.

Senator FORAKER. You have no alternative proposition, as I understand you?

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Senator FORAKER. You have no alternative proposition, as I understand you?

Mr. POWELL. No. I have offered one proposition, but I have no alternative to offer at this time.

Senator KEAN. There being no further witnesses present who desire to be heard, these hearings are closed. The committee will adjourn until to-morrow at 2 o'clock.

TUESDAY, *May 23, 1905.*

The committee met pursuant to adjournment.

Present: Senators Elkins (chairman), Cullom, Kean, Dolliver, Clapp, and Newlands.

MAY 23, 1905.

NATIONAL INCORPORATION OF INTERSTATE RAILROADS.

ADDITIONAL STATEMENT OF SENATOR NEWLANDS.

[The first part of this statement will be found on page 776, Vol. II.]

Mr. CHAIRMAN: On April 17, 1905, after making my statement regarding my resolution for the national incorporation of the interstate railroads of the United States Senator Foraker asked me certain questions relative to my proposed plan, which are to be found on pages 12 and 13 of these hearings, and suggested that I write out my answers and put them in the record. I avail myself of this privilege, and have the honor to submit the following:

For convenience of reference and for a better understanding of the matters in controversy, I insert the full colloquy that occurred at that time between Senator Foraker and myself.

Senator FORAKER. I desire to ask the Senator some questions now, so that they may appear in the record immediately following his paper, to which I listened with great interest, for, as the Senator from Illinois says, it is a well-prepared paper and makes a number of very valuable suggestions. My questions will not pertain to the policy that is involved, but only to the matter of the legal and practical conclusions which, as I listened, occurred to my mind as likely to arise if we undertake to adopt such legislation as he suggests.

1. In the first place, the constitutional power conferred on Congress as to interstate commerce is to regulate it, not to engage in it. Congress has no authority, as I understand, to authorize the Government to engage in interstate commerce. Whatever we are to do, therefore, is to be in the nature of regulating interstate commerce.

If that be the power we are to exercise in legislation, it does not seem to me that the railroads could be regarded as agencies of the Government. If they are not agencies of the Government, there is no power that I know of to exempt them from taxation by the States—certainly no more than there would be to exempt the property of the national banks from taxation by the States.

That is the first question to which I call the Senator's attention, and to it I do not want an answer now. He can answer later.

The next question is one of a practical character, and that is:

2. If we were to undertake to carry out such a scheme or plan as the Senator recommends, could we compel the roads already in existence to incorporate under act of Congress? And if they were willing to do that by reason of the inducements the Senator suggests we might hold out to them, could they get rid of their outstanding stocks and bonds?

I can understand how it would be easy enough to organize a new corporation, under an act of Congress, to construct a road, and how it could issue the bonds and stocks necessary to carry out that purpose; but some of these great companies have already millions, and some of them hundreds of millions, of outstanding stocks and bonds, and I do not understand how those could be called in in order that other stocks and bonds might be substituted. It seems to me that that would be an insurmountable difficulty.

3. Then the third question is, How would the Senator deal with transportation confined wholly within a State; that is, originating and ending in the State; but which was conducted by these interstate lines? I imagine they could not take away purely State business from such a road.

These are only a few of many questions that, it seems to me, would arise, but these are right at the begining of the whole matter, and I put them in the record here so that the Senator may, when we get further along in the investigation, give us some answer.

Senator NEWLANDS. You do not desire an answer now?

Senator FORAKER. No; not now.

Senator NEWLANDS. I am ready to answer now.

Senator DOLLIVER. Why not now?

Senator FORAKER. Because I have one other question—a question suggested by the Senator from Tennessee (Mr. Carmack)—and that is this:

4. As to the constitutional power of Congress to levy a tax on gross receipts under such a plan as the Senator from Nevada has suggested.

Senator NEWLANDS. I will answer that now.

Senator CARMACK. I suggest that the Senator take time to answer thoroughly.

Senator NEWLANDS. Can I write the answers and put them in the record?

Senator FORAKER. Yes.

MEANING OF "REGULATE."

In answer to the first question, I would say that the right to pass a national act for the incorporation of railroads engaged in interstate commerce does not depend entirely upon the interstate-commerce clause of the Constitution. It depends upon the power given to Congress under section 8, Article I, "to provide for the common defense and general welfare of the United States;" "to regulate commerce with foreign nations and among the several States," and "to establish post-offices and post-roads."

The word "regulate" in the Constitution has been given no narrow construction. The term "to regulate" does not mean simply to prescribe the rule. It has been held to sanction legislation absolutely prohibiting interstate commerce, as in the case of the lotteries. It has been held to apply to legislation facilitating or promoting interstate and foreign commerce. Under this power, among others, the Northern Pacific and other railroads were incorporated; under this power, among others, the Panama Canal is being built to-day, involving not only the construction of the canal, but the ownership and operation of a railroad and the conduct of the business of a common carrier.

So also the term "establish" in connection with post-offices and post-roads has been used in no narrow sense. It includes the leasing or construction and ownership of post-offices. It includes not simply the establishing of post-roads, but the construction, as in the case of the Cumberland road. It includes the operation of post-offices and post-roads. It includes the actual carrying of the mails by Government employees. Instead of intrusting this work to agents, incorporated or otherwise, or instead of simply determining the rule by which post-offices and post-roads are to be conducted, Congress has

not only established post-offices, but given their establishment an entire monopoly of certain kinds of business, even punishing as a crime any participation in them by virtue of State authority or otherwise. Under these powers the National Government could undoubtedly construct a railroad. If it could construct a railroad it could operate it, and if it should not choose to do either it could select an agent for the purpose of constructing and operating it. It can select any instrumentality for the exercise of the broad powers employed in the control of the postal service, interstate commerce, and the military defense. Being sovereign in the exercise of these powers, it acts upon every foot of American soil, regardless of State lines and unimpeded and unobstructed by State legislation. It can select any agents it chooses for carrying out such powers. It can select as such agents individuals, or can itself create corporations for the purpose of carrying out those great governmental powers.

TAXATION OF NATIONAL INSTRUMENTALITIES.

When the Government condemns for public use and constructs a post-road, that moment the post-road is free from State taxation. If the Government buys real estate and builds a post-office, that moment the real estate and building are exempt from State taxation. If the National Government should construct railroads for the purpose of carrying out these powers, such railroads would be exempt from State taxation, just as post-offices and custom-houses are, and just as post-roads would be if built. If it intrusts such work to a corporation created by itself, the corporation is the agent for the purpose of carrying out governmental powers, and none of its powers or operations can be taxed by a State. If it selects certain property as the instrumentality or means through which its powers are to be exercised, so also would such property be exempt from State taxation, for just as the powers and the operations of the Government agent would be exempt from all local taxation, so also would be the property selected as the chosen instrument for the exercise of those powers. The powers and operations would be exempt without any express declaration to that effect by Congress. A different rule would probably apply to the property selected as the chosen instrument for the exercise of a national power. In that case it would be necessary to show unmistakably that the property was selected as the instrumentality, and that it was the purpose of Congress that it should be taken out of the domain of State taxation.

The proper organization of a system of transportation is just as essential to the welfare of the people as is the creation of a proper financial system. In the early history of the country it was determined to establish a United States bank to promote the fiscal operations of the Government. The State of Maryland sought to impose a tax upon the notes of a United States bank in Maryland. The notes were property just as a railroad is property, and yet the court held that the State of Maryland could not in the exercise of its taxing power tax those notes. It is true that in that case Chief Justice Marshall held that so far as the bank building was concerned the exemption would not apply, but he so held upon the ground

that the ownership of the bank building was not essential to the operation of the bank; the bank could be conducted upon leased property, and therefore the bank building could not be regarded as a national instrumentality for the purpose of carrying out the powers conferred by the National Government upon the bank, but all property absolutely essential to the powers conferred upon the bank, such as promissory notes, bills of exchange, etc., were exempt from State taxation.

It should be noted that a railroad is a very different property from a bank building. The ownership of a bank building is not essential to the operation of a banking corporation. The ownership of a railroad is absolutely essential to the operation of a railroad corporation. If Congress, therefore, under the interstate-commerce power, authorizes the construction of a railroad, it makes that railroad the instrumentality for the purpose of carrying out its powers—the means of the exercise of the power itself. The operation of the railroad can not be segregated from the right of way, the track, the station buildings, and the general equipment of the road. If they belonged to the Government they would be exempt from State taxation, and if the Government selects as its agent a corporation of its own creation and makes its property the instrumentality for the exercise of governmental powers, and unmistakably shows its intention that this instrumentality shall not be embarrassed by State taxation, clearly the property selected as the instrumentality must be as free from taxation as the powers themselves.

In this connection it is proper to say that my contention as to the right of the United States to exempt a railroad incorporated under a national law for interstate commerce, from State taxation, is not urged for the purpose of freeing such roads from sharing the burden of government, but simply for the purpose of securing uniformity and certainty, with a view to facilitating the public regulation of railroad corporations in which the fixed charge of taxes is an important consideration.

Under the rule laid down in Van Allen *v.* The Assessors (3 Wall., 573), it would be competent for the Congress of the United States to submit the property of national railroads engaged in interstate commerce to State taxation, first prescribing the rule by which such property should be taxed. In this way Congress could secure uniformity and certainty in the taxes, by laying down the rule which should be followed by the States; and could thus relieve the National Government of the duty of collecting and distributing the tax. This might be a better method than the one suggested by my resolution. It entirely relieves the United States from the position of a collector and distributer of taxes, and yet would accomplish the same purpose.

THE AUTHORITIES.

In Luxton *v.* North River Bridge Company (153 U. S., 525), it was held that, under the power to regulate commerce among the States, Congress may create a corporation to build a bridge across navigable water between two States, and to take private land for that

purpose, making just compensation. And Mr. Justice Gray, delivering the opinion of the court, said:

> The Congress of the United States, being empowered by the Constitution to regulate commerce among the several States, and pass all laws necessary and proper for carrying into execution any of the powers specifically conferred, may make use of any appropriate means for this end. As said by Chief Justice Marshall, "The power of creating a corporation, though appertaining to sovereignty, is not, like the power of making war, or levying taxes, or of regulating commerce, a great substantive and independent power which can not be implied as incidental to other powers or used as a means of executing them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished." Congress, therefore, may create corporations as appropriate means of executing the powers of government, as, for instance, a bank for the purpose of carrying on the fiscal operations of the United States, or a railroad corporation for the purpose of promoting commerce among the States. (McCulloch *v.* Maryland, 4 Wheat., 316, 411, 422; Osborn *v.* Bank of U. S., 9 Wheat., 738, 861–873; Pacific R. R. Removal Cases, 115 U. S., 1, 18; California *v.* Pacific R. R., 127 U. S., 1, 39.) Congress has likewise the power, exercised early in this country by successive acts in the case of the Cumberland or National road from the Potomac across the Alleghenies, to the Ohio, to authorize the construction of a public highway connecting several States. See Indiana *v.* United States, 148 U. S., 148. (153 U. S., 529.)

In California *v.* Pacific Railroad (127 U. S., 1), it was directly adjudged that Congress has authority, in the exercise of its power to regulate commerce among the several States, to authorize corporations to construct railroads across the States, as well as the Territories of the United States; and Mr. Justice Bradley, speaking for the court, and referring to the acts of Congress establishing corporations to build railroads across the continent, said:

> It can not at the present day be doubted that Congress, under the power to regulate commerce among the several States, as well as to provide for postal accommodations and military exigencies, had authority to pass these laws. The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from State to State is essential to the complete control and regulation of interstate commerce. Without authority in Congress to establish and maintain such highways and bridges, it would be without authority to regulate one of the most important adjuncts of Congress. This power in former times was exerted to a very limited extent, the Cumberland, or National, road being the most notable instance. Its exertion was but little called for, as commerce was mostly then conducted by water, and many of our statesmen entertained doubts as to the existence of the power to establish ways of communication by land. But since, in consequence of the expansion of the country, the multiplication of its products, and the inventions of railroads and locomotion by steam, land transportation has so vastly increased, a sounder consideration of the subject has prevailed and led to the conclusion that Congress has plenary power over the whole subject. Of course the authority of Congress over the Territories of the United States and its power to grant franchises exercisable therein are, and ever have been, undoubted. But the wider power was very freely exercised, and much to the general satisfaction, in the creation of the vast system of railroads connecting the East with the Pacific, traversing States as well as Territories, and employing the agency of the State as well as Federal corporations. (127 U. S., 39–40.)

McCulloch *v.* Maryland (4 Wheat., 485).—This case decided that a stamp tax on the notes issued by a Federal bank was a tax on the operation of a Federal agency and therefore void. The essence of the decision is the impotency of the States to burden the operations of the Federal Government.

As to a tax on property as distinguished from operations, the court said, in conclusion:

> The States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government. * * *
>
> This opinion * * * does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State.

Osborn *v.* United States Bank (9 Wheat., 737).—Practically a restatement of the preceding case on the points in issue. The court said, page 867, that a contractor could not be taxed for supplying a military post with provisions or for transporting provisions to troops in behalf of the Federal Government; but "it is true that the property of the contractor may be taxed as the property of other citizens, and so may the local property of the bank. But we do not admit that the act of purchasing or of conveying the articles purchased can be under State control."

This case continues the principle of the McCulloch Case by laying emphasis on the operations of the Government and the impotency of the States to interfere therewith.

Thompson *v.* Pacific Railroad (9 Wall., 579).—This was a case of taxation by a State of a railroad acting under a Federal charter, as well as a State charter. The court said (p. 590):

> We do not think ourselves warranted, therefore, in extending the exemption established by the case of McCulloch *v.* Maryland beyond its terms. We can not apply it to the case of a corporation *deriving its existence from State law, exercising its franchise under State law, and holding its property within State jurisdiction and under State protection.*

In this case the court considered the possibility of what would happen if Congress should do what it had not done, to wit, explicitly exempt its agent from taxation. The court said (p. 588):

> We do not doubt, however, that * * * Congress may * * * exempt, in its discretion, the agencies employed in such service from any State taxation which will really prevent or impede the performance of them.
>
> But can the right of this road to exemption from such taxation be maintained in the absence of any legislation by Congress to that effect?

Throughout this case it will be noted that the court is careful to say that the case did not present the feature of any positive attempt on the part of Congress to exempt the property from State taxation, and the inference is clear that in such a case the exemption would have been operative and the State tax invalid.

This case emphasizes the difference between property and the operations of an agent of the Government, as follows (p. 591):

> We fully recognize the soundness of the doctrine that no State has a "right to tax the means employed by the Government of the Union for the execution of its powers." But we think there is a clear distinction between the means employed by the Government and the property of agents employed by the Government. Taxation of the agency is taxation of the means; taxation of the property of the agent is not *always, or generally,* taxation of the means.
>
> No one questions that the power to tax all property, business, and persons, within their respective limits, is original in the States and has never been surrendered. It can not be so used, indeed, as to defeat or hinder the operations of the National Government; but it will be safe to conclude, in general, in refer-

ence to persons and State corporations employed in Government service, that *when Congress has not interposed* to protect their property from State taxation, such taxation is not obnoxious to that objection.

Again obviously intimating a different opinion had Congress expressly established such exemption.

Railroad Company *v.* Peniston (18 Wallace, 5).—This case arose out of the claim on the part of the State of Nebraska of the power to tax roadbed, depots, wood stations, water stations, and other realty, telegraph poles, telegraph wires, bridges, boats, papers, office furniture and fixtures, money and credits, movable property, engines, etc., of the Union Pacific Railroad Company.

The company was created by the act of Congress of July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Mississippi River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes." Various amendments were made to the original act at later sessions of Congress, but neither in the original act nor in any amendment was any provision made by Congress respecting the taxation of it or its property by the States through which the road might run.

The tax was resisted by the company on the ground that, having been incorporated by Congress—

> The State of Nebraska has no power to subject to taxation for State purposes the roadbed, rolling stock, and other property necessary for the use and operation of the road, such power resting exclusively in the Government of the United States.

It was distinctly stated by Mr. Chief Justice Strong, who delivered the opinion, that—

> The States may not levy taxes the direct effect of which shall be to hinder the exercise of any powers which belong to the National Government. The Constitution contemplates that none of those powers may be restrained by State legislation (p. 30).

After referring to the legislation creating the Union Pacific road and adverting to the objects and purposes of that legislation, the Justice further said (p. 32):

> Admitting, then, fully, as we do, that the company is an agent of the General Government, designed to be employed, and actually employed, in the legitimate service of the Government, both military and postal, does it *necessarily* follow that its property is exempt from State taxation?

Emphasizing the difference between the operations of an agent and the property thereof, Justice Strong said (p. 33):

> It may therefore be considered as settled that no constitutional implications prohibit a State tax upon the property of an agent of the Government *merely* because it is the property of such an agent.

Then, after consideration of the various cases bearing upon the general question, Justice Strong summed up as follows (p. 36–37):

> It is, therefore, manifest that exemption of Federal agencies from State taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the Government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such *necessary* effect. It leaves them free to discharge the duties they have undertaken to perform. **A tax upon their operations is a direct obstruction to the exercise of Federal powers.**

Eight justices heard this case, and the opinion of the court upholding the validity of the tax was concurred in by four of them. A fifth, Judge Swayne, concurred in the judgment, but said:

I see no reason to doubt that it was the intention of Congress not to give the exemption claimed. The exercise of the power may be waived, but I hold that the road is a national instrumentality of such a character that Congress may interpose and protect it from State taxation whenever that body shall deem it proper to do so.

So that Judge Swayne would have decided against the majority of the court had there been exempting legislation. Two other justices flatly dissented, giving an opinion to the effect that such State taxation was invalid, even in the silence of Congress. And the eighth justice merely remarked: "I dissent from the opinion of the court."

So that all that can be claimed from this decision as to the power of Congress to exempt a corporation from taxation by affirmative legislation is that the court was evenly divided, and even this can not be fairly claimed, for the case of exempting legislation was not before the court, and the opinions of the four justices who upheld the tax do not contain a word which denies the power of Congress to exempt the property which it expressly declares to be its chosen instrumentality.

Mr. Justice Bradley, for himself and Mr. Justice Field, delivered a vigorous dissenting opinion, in the course of which he said (p. 47):

The Union Pacific Railroad Company, therefore, being a United States corporation, created for national objects and purposes, and deriving its existence, its powers, its duties, its liabilities, from the United States alone; being responsible to the United States, now as formerly, for a whole congeries of duties and observances; being subjected to the forfeiture of its corporate franchises, powers, and property to the United States and not to any individual State; being charged with important duties connected with the very functions of the Government, every consideration adduced in the cases of McCulloch *v.* Maryland and Osborn *v.* The Bank would seem to require that it should be exempt not only from State taxation, but from State control and interference, except so far as relates to the preservation of the peace and the performance of its obligations and contracts. In reference to these and to the ordinary police regulations imposed for sanitary purposes and the preservation of good order, of course, it is amenable to State and local laws.

As an instrument of national commerce as well as Government operations, it has been regulated by Congress. Can it be further regulated by State legislation? Can the State alter its route, its gauge, its connections, its fares, its franchises, or any part of its charter? Can the State step in between it and the superior power or sovereignty to which it is responsible? Such an hypothesis, it seems to me, is inadmissible and repugnant to the necessary relations arising and existing in the case. Such an hypothesis would greatly derogate from and render almost useless and ineffective that *hitherto unexecuted power* of Congress to regulate commerce by land among the several States. If it be declared in advance that no agency of such commerce, which Congress may hereafter establish, *can be freed from local impositions, taxation, and tolls*, the hopes of future free and unrestricted intercourse between all parts of this great country will be greatly discouraged and repressed.

Again:

But it is contended that the laying of a tax on the roadbed of the company is nothing more than laying a tax on ordinary real estate, which was conceded might be done in the case of the United States Bank, in reference to its banking house or other lands taken for claims due in the course of its business. This is a plausible suggestion, but, in my apprehension, not a sound one. In ascertaining what is essential in every case, respect must always be had to the subject-matter. The State of Maryland undertook to tax the circulation of the

United States branch bank established in that State by requiring stamps to be affixed thereto: the State of Ohio imposed a general tax of $50,000 upon the branch established therein. These taxes were declared unconstitutional and void. They impeded the operations of the bank as a financial agent. Real estate was not a necessary appurtenant to the exercise of the functions of the bank. It might hire rooms for its office, or it might purchase or erect a building.

But the primary object of a railroad company is commerce and transportation. In its case a railroad track is just as essential to its operations as the use of a currency or the issue or purchase of bills of exchange is to the operations of a bank. To tax the road is to tax the very instrumentality which Congress desired to establish, and to operate which it created the corporation.

Besides, all that a railroad company possesses in reference to its roadbed is the right of way and the right to use that land for the purpose of way. This is a franchise conferred by the Government, and inseparately connected with the other franchises which enable it to perform the duties for the performance of which it was created. Any estate in the land—the soil, the underlying earth—beyond this belongs to the original proprietor, and that proprietor in the present case is the Government itself. So that, look at it what way we will, there is no room for the taxing power of the State. The estate in the soil can not be taxed, for that remains in the United States; the franchise of right of way and materials of track can not be taxed, because they are essentially connected with and form a part of the powers, faculties, and capital by which the national purposes of the organization are accomplished.

If the roadbed may be taxed, it may be seized and sold for nonpayment of taxes—seized and sold in parts and parcels, separated by county or State lines—and thus the whole purpose of Congress in creating the corporation and establishing the line may be subverted and destroyed.

In my judgment, the tax laid in this case was an unconstitutional interference with the instrumentalities created by the National Government in carrying out the objects and powers conferred upon it by the Constitution (pp. 49–50).

Van Brocklin *v.* State of Tennessee (117 U. S. 151).—In this case Mr. Justice Gray, speaking for the court, said:

> The liability of the property of the Pacific Railroad companies to State taxation has been upheld on the distinction * * * that, although the railroad corporations were agents of the United States, the property taxed was not the property of the United States, and a State might tax the property of the agents, provided it did not tax the means employed by the National Government.

And he there quoted with approval the following from the dissenting opinion of Mr. Justice Bradley in the Peniston Case:

> The States can not tax the powers, the operations of the property of the United States, nor the means which it employs to carry its powers into execution.

California *v.* Central Pacific Railroad Company (127 U. S., 1).—The question of taxation by the State of California of the franchise of the Central Pacific Railroad Company came before the Supreme Court in this case, and the court, speaking by Mr. Justice Bradley, unanimously held that such franchise was not subject to taxation by the State. In the opinion the following language is used:

> It seems very clear that the State of California can neither take them (the franchises held by the company) away, nor destroy nor abridge them, nor cripple them by onerous burdens. Can it tax them? It may undoubtedly tax outside visible property of the company situated within the State. That is a different thing. But may it tax the franchises which are the grant of the United States? In our judgment it can not. What is a franchise? * * * Generalized, and divested of the special form which it assumes under a monarchical government based on feudal traditions, a franchise is a right, privilege, or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the government directly or by public agents, acting under such conditions and regulations as the government may

impose in the public interest and for the public security. Such rights and powers must exist under every form of society. They are always educed by the laws and customs of the community. Under our system their existence and disposal are under the control of the legislative department of the government, and they can not be assumed or exercised without legislative authority. No private person can establish a public highway, or a public ferry, or a railroad, or charge tolls for the use of the same, without authority from the legislature, direct or derived. These are franchises. * * * No persons can make themselves a body corporate and politic without legislative authority. Corporate capacity is a franchise. * * *

In view of this description of the nature of a franchise, how can it be possible that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress? Taxation is a burden, and may be laid so heavily as to destroy the thing taxed, or render it valueless. As Chief Justice Marshall said in McCulloch *v.* Maryland, "the power to tax involves the power to destroy." Recollecting the fundamental principle that the Constitution, laws, and treaties of the United States are the supreme law of the land, it seems to us almost absurd to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates from, and is a portion of, the power of the government that confers it. To tax it is not only derogatory to the dignity, but subversive of the powers of the government and repugnant to its paramount sovereignty. * * * It may be added that these views are not in conflict with the decisions of this court in Thomson *v.* Pacific Railroad (9 Wall., 579), and Railroad Company *v.* Peniston (18 Wall., 5). As explained in the opinion of the court in the latter case, the tax there was upon the property of the company and not upon its franchises or operations. (127 U. S., 40–41.)

Reagan *v.* Mercantile Trust Company (154 U. S., 413).—While the language in this case is not wholly clear, it seems to indicate a belief that Congress might exempt such a railroad from State taxation. Page 416:

Similarly we think it may be said that, conceding to Congress the power to remove the corporation in all its operations from the control of the State, there is in the act creating this company nothing which indicates an intent on the part of Congress to so remove it. * * * It (Congress) must have known that, in the nature of things, the control of that business would be exercised by the State, and if it deemed that the interests of the nation and the discharge of the duties required on behalf of the nation from this corporation demanded exemption in all things from State control it would unquestionably have expressed such intention in language whose meaning would be clear. Its silence in this respect is satisfactory assurance that, in so far as this corporation should engage in business wholly within the State, it intended that it should be subjected to the ordinary control exercised by the State over such business.

Central Pacific Railroad Company *v.* California (162 U. S., 125):

It may be regarded as firmly settled that although corporations may be agents of the United States their property is not the property of the United States, but the property of the agents, and that a State may tax the property of the agents, subject to the limitations pointed out in Railroad Company *v.* Peniston, etc.

Of course, if Congress should think it necessary for the protection of the United States to declare such property exempted, that would present a different question.

Van Allen *v.* The Assessors (3 Wall., 70 U. S., p. 573).—The court in this case considered the act of June 3, 1864, "To provide a national currency," etc., which subjected the shares of the bank associations in the hands of shareholders to taxation by the States, under certain limitations. It also considered the act of March 9, 1865, of the legislature of New York, which taxed such shares but did not tax them by the same rule as the shares of State banks, and

held this statute unwarranted by the act of Congress and void. The court said (p. 591):

> That Congress may constitutionally organize or constitute agencies for carrying into effect the national powers granted by the Constitution; that those agencies may be organized by the voluntary association of individuals, sanctioned by Congress; that Congress may give to such agencies so organized corporate unity, permanence, and efficiency; and that such agencies in their *being, capital, franchises, and operations* are not subject to the taxing power of the States, have ever been regarded since those decisions as settled doctrines of this court.

It will be perceived in this case that Congress laid down the rule under which a State tax could be levied upon the capital invested in a national corporation, and as the rule laid down by Congress was violated by the State, the tax of the State was held to be invalid.

From the foregoing authorities it seems abundantly clear—

First. That Congress, under the power to regulate interstate commerce, can create corporations for the purpose of engaging in such commerce.

Second. That a State can not tax the franchises of such corporations, nor can it interfere with the operations of a corporation chartered by the United States for such purposes, or hinder, impede, or burden such corporation in carrying out such purposes.

Third. That, while the State may tax the tangible property of the corporation within its territorial limits, in the absence of any restriction upon the taxing power of the State contained in the charter of the corporation, nevertheless Congress may in terms expressly provide against such State taxation by a declaration that all the property of the corporation necessary for the carrying out of the purposes for which it was incorporated shall not be subject to State taxation, or it can prescribe the rule for State taxation. In other words, Congress itself can declare what shall be regarded as the instrumentalities of government, can define such instrumentalities in the charter itself, and upon such instrumentalities the States can not levy any tax if Congress forbids.

NATIONAL INCORPORATION OF EXISTING RAILROADS.

In his second question Senator Foraker inquires whether we could compel the roads already in existence to incorporate under an act of Congress, and if they were willing to do so, could they get rid of their outstanding stocks and bonds?

In reply I would say that I am uncertain as to whether we should take measures to compel existing roads to incorporate under a national act. I would prefer to so shape a wise, fair, and comprehensive law, simplifying their operations and relieving them of many existing embarrassments, which tend to the injury of the public as well as of the roads themselves, as to induce them to accept its provisions.

Of course we could not compel those roads to accept a national charter, but we could by law prevent them from engaging in interstate commerce unless they accepted a national charter. As three-fourths of the business of the roads is interstate, it is clear that self-interest would compel the roads under such conditions to accept a national charter.

But I do not think any compulsory process is necessary. The rail-

roads themselves must be desirous of getting rid of the present complexity. It is amazing how they have been able to develop their groups or systems under the machinery now afforded by the law. We have the anomaly of the lesser sovereignty creating the agency which is to do the greater sovereignty's business; the lesser sovereignty, the State, can create a corporation for the purpose of constructing a railroad in that State. Such a railroad is a foreign corporation in all other States and can operate in such States only by their comity. Thus the Baltimore and Ohio Railroad is incorporated under the laws of Maryland. As to that State it is a domestic corporation, but as to the 10 or 12 other States in which it operates it is a foreign corporation. The Baltimore and Ohio Railroad Company has been obliged to incorporate a great number of subsidiary companies in other States of which it owns the stock. All this tends to complexity, both as to the finances, taxation, and regulation either by a State or National Government. Similar conditions exist in the case of the Pennsylvania Company and the New York Central Railroad Company. The Rock Island system is consolidated under a holding company organized under the laws of New Jersey, in which there is not a single foot of Rock Island track. I take it for granted that if in a given State a railroad is to be operated by a foreign corporation it would prefer that that corporation should be the creation of the national government in which it has a share rather than the creation of a foreign State government in which it has no share.

Undoubtedly, had it been foreseen that the railroad systems of the country would assume their present enormous proportions and that interstate commerce would be the dominant factor in the business of each railroad, involving the practical obliteration of State lines, so far as the railroad business was concerned, national machinery would have been established for the purpose of creating such agencies of interstate commerce. But railroading has been an evolution. Railroads in the first instance were short roads, entirely within the boundaries of a single State. As no national legislation was given, they have been compelled to work out their systems through the States by the creation of State corporations, which were domestic corporations in the States which created them and which were foreign corporations in all other States in which they operated. The result is that in many cases the laws have been too lax and in other cases too restricted, and it is amazing that under these difficulties the railroad operators could have worked out so splendid a system. The evolution of railroads has been accomplished under the greatest difficulty. It is a question as to whether many of the practical consolidations now existing would stand the legal test. All such embarrassments and uncertainties tend to make railroad financing and railroad operation difficult. It seems to me we should frankly recognize the evolution of railroading by a national law and that we should do everything that is possible to simplify the operation of taxation and the regulation of railroads, and this can only be done under a charter given by a sovereign whose dominion within the powers conferred by the Constitution, of which interstate commerce is one, rests upon every foot of American soil regardless of State lines, and that the legislation regarding it should be the legislation of the whole nation, and not the complex, varying, and contradictory legislation of the various parts.

Senator Foraker also inquires as to how the existing railroads, in

case they accepted national charters, could get rid of their outstanding stocks and bonds.

As to the bonds, the answer is simple. Each railway system would organize a national corporation under a national law, and would transfer all its property to such corporation subject to the existing bonded indebtedness. As the existing bonds matured they would be retired by an issue of the bonds of the new company, and thus in the end the bonds of the new national corporation would be substituted for the bonds of the constituent State corporations. As to the stock, the process would be no more difficult than that frequently gone through with in existing consolidations of State corporations. The stock of the old companies would be surrendered and the stock of the new company substituted. Of course, the stock issue of the new company must be subject to the approval of some tribunal, such as the Interstate Commerce Commission, in order to avoid overcapitalization. But I take it that a fair method of valuation of the stock of the existing road could be secured. Individually I should favor a very liberal adjustment. I should recognize the market value of existing stocks, whether watered or not. The watering of stock in the past has had many causes, among them the difficulty of promoting such enterprises without giving investors some speculative chance. The railroads have been obliged to work out their own salvation, unaided by wise laws, and while possibly some of these exaggerated stock issues have been the creation simply of stock speculators many of them have been necessitated by financial exigencies. At all events, the stocks are now in the hands of the investing public and have largely gone out of the hands of those who originally issued them. If we can only guard the stock and bond issues of the future and prevent overcapitalization—all of which is provided for by my proposition—we can easily afford to validate much of the overcapitalization of the past.

The amount of stock which should be issued in new national corporations to the old constituent companies could be determined in two ways. One would be by providing a special charter for each of the eight or ten existing systems. Congress, in that event, could determine in each case by the statute itself what should be the issue of the new corporation. A better method, however, would be to shape a general law and leave the approval of the stock and bond issues to some tribunal such as the Interstate Commerce Commission.

STATE COMMERCE.

Senator Foraker's third question is as to how we would deal with transportation originating and ending in a State, but which is conducted by those interstate lines.

I do not see how there is any difficulty in this. Surely an interstate railroad can engage in State business if a State railroad can engage in interstate business; and if, as is the rule, the interstate business is three-fourths of the business of every railroad in the country, it would seem proper that the railroad conducting such business should be an interstate road rather than a State road. It is true that I would prefer that there should not be two systems of regulation of rates. If we accomplish the consolidation of these great systems of railroads through a national charter, we will, of

course, so regulate the business of such corporations as to prevent extortion, preference, and discrimination. The regulation of the greater will necessarily include the regulation of the less, and it only produces complexity when we have the legislatures, the railway commissions, and the taxing powers of forty-five States all operating at the same time upon these national highways. It would be much better for them and much better for the public if, instead of being under the control of forty-six sovereigns—namely, forty-five States and the nation, they were under but one national control. It will be easy, however, to take the sentiment of the States as represented in Congress upon this subject. If they desire to reserve the control and regulation of State commerce and also the police powers, there is no reason why it should not be so provided in the act.

My proposition does not involve the taking away from the State of the power of regulating State commerce. It can exercise that power over corporations organized by the State and doing business in it. It can exercise that power with reference to corporations organized under a national incorporation act unless there is a declaration in the incorporation act that the power shall not be exercised so far as the Government instrumentality is concerned. Such a declaration would leave the power still existing, but would simply assert that the power should not be exercised as to the instrumentality created by the National Government.

The power of Congress to exempt national roads from State regulation would rest upon the same principle as the power to exempt them from State taxation, viz, that the power to regulate, like the power to tax, is the power to destroy. It is not quite so clear, however, as the power to regulate would only apply to a small part of the business of an interstate road, viz, the commerce beginning and ending in a State; and the destructive effect of this could not be great.

THE FEDERAL COURTS.

Another objection urged to national incorporation is that all national railroad corporations would have the right to carry their cases into the United States court. The answer to this is that the right to carry the case into the United Sates court would depend upon the cause of action and not upon the national character of the corporation. If the case was one arising under the law or the Constitution of the United States, the corporation would have the right to carry such case into the Federal courts, whether it was a national or a State corporation. This could be made certain by the statute itself, as in the case of the national banks; for under the law regarding the incorporation of national banks, act of July 12, 1882 (22 Stat., 162, sec. 4), it is expressly provided that the jurisdiction for suits hereafter brought by or against any association established under any law providing for national-bank associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do, or might do, banking business, when such suits may be begun, and all laws and parts of laws of the United States inconsistent with this provision be, and the same hereby are, repealed.

In the case of the Leather Manufacturers' Bank *v.* Cooper (120 U. S., p. 778), the court, in considering the above section of the act of 1882, said:

> This was evidently intended to put national banks on the same footing as the banks of the State where they were located for all the purposes of the jurisdiction of the courts of the United States.

But it will thus be seen that under the national statute incorporating railroads, the railroads can be prevented from claiming their Federal origin as a reason for invoking the jurisdiction of the United States courts, and thus the objection to the inconvenience of compelling all persons in litigation with national railroad companies to go into the Federal courts would be obviated.

IS THE TAX ON GROSS RECEIPTS CONSTITUTIONAL?

The fourth question put by Senator Foraker, at the suggestion of Senator Carmack, was as to the constitutional power of Congress to levy a tax upon gross receipts of railroads engaged in interstate commerce.

In answer to this question I will state that the tax which I would impose would not be a direct tax; it would be in the nature of a franchise tax, measured by the gross receipts of the corporation; and I have no doubt that that could be shaped in such a way as to avoid the objection of direct taxation, which is, of course, forbidden by the Federal Constitution.

I call attention in this connection to the war-revenue act, which fixed a tax upon oil refineries and sugar refineries—a tax of one-eighth of 1 per cent upon their gross receipts over $250,000. That tax went into effect; it was paid for years until the law was repealed, and I never heard it questioned. I believe there are other taxes of that kind which have been imposed by the revenue laws of this country. I think that in the war-revenue law the Senator will find precedents for such a tax as I would impose here. A license or franchise tax measured by the gross receipts is quite a distinct thing from a direct tax upon the property itself.

STATEMENT OF WALKER D. HINES IN REBUTTAL TO EVIDENCE OF THOSE FAVORING THE ENLARGEMENT OF THE POWERS OF THE INTERSTATE COMMERCE COMMISSION.

Mr. HINES. I have carefully read all that has been said before the committee at its hearings on the regulation of railway rates from the beginning of those hearings, on April 17, until this date, and I wish to submit to the committee certain statements, purely by way of rebuttal of what has been said by some of the gentlemen who have urged that the rate-making power be given to the Interstate Commerce Commission.

STATEMENT OF HON. W. A. HARRIS ON MAY 4, 1905.

Hon. W. A. Harris, in his statement on May 4, 1905, said:

"We understand that all the railroad men assent to the proposition that the Government has the right and that it should regulate and control rates. But we are unable to understand what the words

'regulate' and 'control' really mean, unless they mean that in the ultimate the Commission shall have the power to fix a rate."

This statement aptly illustrates the position which is consciously or unconsciously taken by all of the advocates of the rate-making power for the Commission, which is that there is only one possible way to regulate railway rates, to wit, by means of a rate-making commission. I submit that this view involves a very grave error. A rate-making railroad commission is not the exclusive method of effective regulation, but it is the most unfair method to the railroads, and in the long run the most undesirable method for the public. It should be remembered that the proposition to create a Federal rate-making railroad commission simply means to copy, in effect, the rate-making commissions of the States, and that the latter tribunals were first established during periods of extreme hostility to railroads and constituted the first experiments in the United States in the direction of railroad control. Moreover, there is nothing in the history of the State commissions to justify the view that the experiment, started under these conditions so unfavorable to really fair regulation, has proved successful.

Mr. Harris says again:

"It was supposed in 1887, when this law was passed, that that was what was intended to be the purpose of the law, that the Commission should examine into each case, and when a rate was found to be unreasonable it should put in force a rate which would be reasonable."

This statement is not correct. The history of the circumstances attending the adoption of the interstate-commerce act shows that nothing was more clearly understood in regard to it than that no rate-making power of any description was to be conferred upon the Commission, to be exercised on complaint or otherwise.

Mr. Harris states that in the last five or six years the transportation charges on live stock from the Southwest have advanced 25 or 30 per cent. I believe that the statement is made that the first advance took place in 1899, about six years ago. If that was an unreasonable advance, it was open to the shippers objecting to it to proceed at once before the Interstate Commerce Commission to have that advance declared unreasonable and discontinued. Of course the advanced rates had to be filed with the Commission. That Commission had the power to proceed on its own motion if it had reason to believe that the advance was unreasonable; yet the advance was allowed to go entirely unchallenged and is now brought up as an argument for a rate-making power, which is not at all needed to correct that advance if unreasonable. It seems that only the last advance was complained of by the shippers, and that the Commission has now had that complaint before it for over a year and has reached no conclusion. Thus the machinery of the present act has never been utilized to a conclusion with respect to the advance in cattle rates from the Southwest, and yet that machinery which was deliberately adopted by Congress is thrown aside by these gentlemen without being tried, and demand is made that a vastly greater and more dangerous power be conferred upon a Government bureau to correct the situation when there has been no demonstration whatever that the carefully drawn provisions of the present law are inadequate. Moreover, if, as is claimed, the advance in rates on cattle constituted an unjust discrimination against

that class of traffic, it has been open to the claimants ever since the passage of the Elkins Act more than two years ago to get the Interstate Commerce Commission to bring suit direct in the circuit court to stop that discrimination. Such a case would have been advanced upon the application of the Attorney-General and would have had a very speedy hearing before three circuit judges; the decision of the circuit court upon this hearing would have gone into effect immediately, notwithstanding any appeal, unless the circuit court itself had seen fit to suspend its decree during the pendency of an appeal. Thus here is another remedy which has had absolutely no trial.

Mr. Harris says again:

"It is not to be supposed that the Congress of the United States, in enacting legislation in 1897, desired to enact a law and prescribe a lot of machinery, extended in its character, with absolutely no result."

This is a very correct statement, and yet these gentlemen are supposing that very thing, because without any serious effort to utilize to a definite conclusion the machinery thus provided by Congress these gentlemen are proclaiming that it is useless and insisting upon the creation of new and dangerous powers to be vested in an administrative bureau of the Government.

Mr. Harris further says: "The Commission testifies, and everybody knows practically, that it is impotent."

Doubtless Mr. Harris is correct in his statement that the Commission testifies that it is impotent and that many people so believe, but the law shows that the Commission is not impotent; that it has the power to order the discontinuance of every unreasonable or unjustly discriminatory rate; that if the carrier does not comply with the Commission's order suit can be brought in the circuit court and advanced to a speedy hearing before three circuit judges, whereupon it is the duty of the circuit court to enforce compliance with the Commission's order, unless it finds that that order is not justified by the facts or is unlawful in form. The exercise of this power has proved substantially effective in every case where it has been lawfully exercised. There is not a single case where a carrier has complied in a merely technical way with such an order of discontinuance; unless the carrier has resisted the Commission's order on the ground that it was unreasonable on the facts or unlawful in form and has been sustained in that position in court, the carrier has in every instance made very substantial reductions as a result of the Commission's orders. It is therefore far from correct to say that the Commission is in fact impotent under the present law.

Mr. Harris says: "I should regret to see a very elaborate and great change in the existing law."

Yet what he proposes is a great and radical change in the law. Under the present law unreasonable rates are corrected in a contested case through the courts and the carriers have the benefit of the impartial judgment of the courts upon these controversies, just like people in general have the impartial judgment of the courts upon their controversies. The plan proposed, however, is to give a Government bureau practically final power over controversies between the railroads and the shippers. In reality the plan which Mr. Harris favors *means* changing the law from a method whereby the law made by

Congress itself shall be enforced through the duly constituted courts to a method whereby the law shall be practically made and enforced by a mere Government bureau. No greater or more far-reaching change in the character of the law could be imagined.

STATEMENT OF MR. ROBERT W. HIGBIE, ON MAY 9, 1905.

In Mr. Robert W. Higbie's statement before the committee on the eighteenth day, Tuesday, May 9, Mr. Higbie states his position to be that "where there is an honest difference of opinion as to whether the charge for a particular service is reasonable or unreasonable, we ask that somewhere, in some place, there be a court, a body, or somebody who can say what is reasonable." What Mr. Higbie demands is substantially accomplished by the efficient enforcement of the present law; if necessary the law can be amended so as to insure even more fully the effective accomplishment through the courts of what Mr. Higbie desires; and the demand which he expresses in the language just quoted does not by any means require for its satisfaction that the rate-making power should be given to an administrative bureau.

Mr. Higbie is disposed to discount the value of the present law by theorizing that the railroads will not comply in a substantial way with the orders of the Commission and decrees of the courts; but in practice the procedure of the present law has not been found defective in the way in which Mr. Higbie suggests. It does seem that the creation of a vast and dangerous power in the hands of an administrative bureau ought to rest on something more substantial than a mere theory, utterly unsupported by any experience, that a more conservative method of regulation would be worthless.

Mr. Higbie refers to two cases of unjust rates. In one of these he states that the Interstate Commerce Commision rendered a decision which the railroads complied with. In the other case he says that no complaint has been filed. It certainly does seem that cases of this sort furnish no arguments for lodging the rate-making power in the Commission. In one case the machinery of the present law has been invoked and the desired result accomplished; in the other case that machinery has not been invoked and consequently no result has been accomplished. Is it not a complete non sequitur to say that, therefore, a radically different and much more dangerous machinery shall be created?

Mr. Higbie refers to the fact that the case which did go to the Commission was four years in reaching a decision. If so, this was a delay on the part of the Commission. If such delays occur in the exercise of the important powers which the Commission now possesses, how much delay will occur when the Commission is overwhelmed with the vastly greater powers which are now proposed for it? Naturally the Commission will be equally as careful in fixing a rate as it is in condemning a rate as unreasonable. If it takes four years to do the latter it would take at least four years to do the former with the same amount of business, and with a vastly increased amount of work it would presumably take much longer.

Mr. Higbie indicates that he thinks the Commission ought to have this power, because, he understands, the courts can not exercise it,

and shows that he has no objection to the exercise of an effective method of regulation through the courts if that method would be constitutional. I think it has been clearly shown to the committee that a perfectly adequate method of correction can be constitutionally employed through the courts, thus giving the railroads the same measure of judicial protection that is enjoyed by other property, instead of turning them over to the largely final determination of an administrative bureau which never has occupied and which in the nature of things never can occupy a perfectly impartial and nonpartisan attitude.

STATEMENT OF HON. ALBERT B. CUMMINS, ON MAY 11, 1905.

On the twentieth day, Thursday, May 11, 1905, Hon. Albert B. Cummins appeared before the committee.

GOVERNOR CUMMINS'S USE OF STATISTICS.

Governor Cummins undertook to show from statistics that the revenues of the railroads of this country were excessive. He took for this purpose the results of a single year, the year ending June 30, 1904. He started out by saying that too much had been charged to operating expenses, and that whereas the operating expenses as charged by the railroads were 67.75 per cent, they ought to be not more than 65 per cent, because the other 2.75 per cent were probably betterments which ought not to have been charged to operating expenses.

Assuming, for the sake of the argument, that Governor Cummins is right in saying that 2.75 per cent represented betterments, the question arises, Why is it improper to charge that to operating expenses? From the public standpoint it would seem to be much better to charge it to operating expenses than to capital account, and certainly it must be charged to one or the other. If the railroads can not take from their earnings the money with which to pay for betterments, they must raise it by issuing new stock or new bonds. Assuming that these matters are charged year by year to capital account, it simply means that there will be a progressive and rapid increase in capital account, upon which the stockholders are entitled to a fair return. If such practice were pursued for thirty or forty years, it can readily be perceived that the capital entitled to a fair return would be enormously increased as compared with the amount of capital if betterments are charged to operating expenses instead of to capital.

Moreover, the theory of charging betterments to capital account instead of to operating expenses rests on the idea that there should be charged against the yearly income only what is necessary to keep up the property in its original condition. But the progress and increasing demands of civilization are such that a railroad could not, if it wished to do so, confine itself to repairs merely necessary to preserve it in its original state. A railroad must constantly make very extensive improvements which put the railroad in far better condition than it was in its original state and yet which barely keep it abreast of the times. No matter how much a railroad may have

to expend on such account in one year, it is probable that it will have to expend even more the next year, and still more the year after, so that such expenses can not be regarded in the light of extraordinary expenses not properly chargeable against current income. Certainly all such expenditures are eminently proper charges against the yearly income. They are absolutely necessary expenses, and it would be most unwise to anticipate the earnings of future years by charging such items to capital account. Another result of such a course would be a really fictitious swelling of the apparent net earnings for the present by eliminating from expenses necessary and unavoidable and regularly recurring items of expenditure, while at the same time piling up additional capital upon which returns would have to be realized for the future.

When money is spent for betterments the stockholders get absolutely no return therefrom except to the extent that the earning power is increased for the future. If the earning power is increased for the future over and above the increase in the future of the demand for betterments, the stockholders then get the benefit and that benefit will then show in the earnings.

Governor Cummins's assumption, therefore, that charges for betterments ought not to be deducted from earnings in ascertaining the ments ought not to be deducted from earnings in ascertaining the returns which the stockholders realize, is not justified.

After increasing the earnings of the railroads in this fictitious manner—that is, by an assumed amount of betterments—Governor Cummins proceeds to add thereto an income of over $100,000,000 "from sources other than operation." It is not proper to add this item. This item is mostly made up of dividends and interest received by railroads on other railroad stocks and bonds, and consequently these amounts have already appeared in the net earnings for the railroads as a whole. For example, let us assume that the net earnings of the Louisville and Nashville Railroad for a given year are $9,000,000. This amount, of course, appears in the Commission's general statistics as income from operation. Assume that out of the net earnings of $9,000,000 the company pays a dividend of 6 per cent upon its capital stock, which we will assume is $60,000,000. Let us assume that the Atlantic Coast Line owns $30,000,000 of this stock. If so, it will receive as a dividend from the Louisville and Nashville $1,800,000. In the Atlantic Coast Line's report to the Interstate Commerce Commission it will show this $1,800,000 as "income from sources other than operation." Yet it is obviously improper, when considering the railroads as a whole, to treat this $1,800,000 as additional income, for it is merely a part of the $9,000,000 net earnings of the Louisville and Nashville, which has already been reported and which is shown in the general result of income from operation. Therefore the principal part of Governor Cummins's $100,000,000 is simply a duplication of what he has already shown as income from operation. To the extent that this income from other sources is not received from other railroad companies, it is an item which ought not to be taken into account at all. If an individual should own a railroad, the returns from his investments other than the railroad certainly would not be taken into account in considering whether the returns from his railroad were excessive; and precisely the same

thing is true of a railroad company. The point to be considered is the returns that the railroad companies get from the operation of their roads, and the returns, if any, that they may happen to get from entirely different investments have absolutely nothing to do with the case.

Moreover, Governor Cummins fails to make any allowance for taxes, which, according to the preliminary report for June 30, 1904, were $56,474,106. Governor Cummins figures, therefore, that there was a net income for the railroads of $789,108,521. The real income was the income from operation of $634,250,873, less taxes, making $577,776,767, or $2,764 per mile, which capitalized at 6 per cent is equal to $46,066, as against Governor Cummins's estimate on a thoroughly fictitious basis of $62,927 per mile. All of Governor Cummins's arguments, therefore, as to excessive aggregate earnings fall to the ground.

Governor Cummins's assumption that the railroads in this country, as a whole, have cost only $36,636 per mile is a most remarkable conclusion, for which he can not furnish any substantial basis. His theories on this subject can not stand for a moment against the facts themselves, as stated by practical men of affairs like President Ramsey, of the Wabash, which facts Governor Cummins does not and can not dispute.

One great danger to the owners of the railroads, to the laborers dependent on the railroads for their wages, and to the commerce of the country, which is to be apprehended from giving a rate-making power to any administrative bureau, is the danger that members of that bureau will proceed upon mere general theories instead of ascertaining and acting upon the real facts. Governor Cummins is a man of prominence and the chief executive of one of the principal States in the Union. He seems to be regarded as a man peculiarly well informed on railroad affairs. He undertakes to deal with a subject of the gravest public importance. Undoubtedly the important public position he holds impresses him with a sense of official responsibility. Yet he makes up his mind and he seeks to influence the minds of others by a mere string of inaccurate theories with absolutely no substantial foundation. Governor Cummins, on account of his prominence in public affairs, is just the type of man who is likely to be selected as a member of the Interstate Commerce Commission. If he were so selected, it is clear that he would proceed to regulate the commercial affairs of this country upon the same theorizing basis that he adopts in his address to the Senate committee. His argument suggests anew the crucial question whether it is better to leave these eminently practical questions primarily in the hands of railroad men, who are bound to be practical and deal with the actual facts, leaving it to the courts to correct and prevent all arbitrary or oppressive action on their part, or whether, on the other hand, it is wise to give an administrative bureau the power to proceed according to the immature theories of its members, when the mistakes of such a bureau can only be corrected by the courts in peculiarly aggravated cases and when neither the railroads nor those dependent upon them, either from a wage-earning or from a commercial standpoint, can have any indemnity for the mistakes which this theorizing bureau will freely make.

SCOPE OF THE PROPOSED RATE MAKING.

Governor Cummins is strikingly inconsistent in his statement of the extent to which a rate-making commission would make rates and the extent to which those rates would be inelastic. He says the commission would only make maximum rates and very few of them, and that the carriers could reduce these rates at will. Yet Governor Cummins knows, or ought to know, that the only thing which the fixing of a maximum rate can correct is a rate that is per se extortionate. He knows, or ought to know, that in order for an administrative bureau to substitute its judgment as to what are the proper relations between localities in place of the present rate adjustment made by the railroads it is absolutely necessary for that bureau to fix the absolute rates, or at any rate the minimum rates, which the railroads must observe; otherwise the railroads can simply preserve the basis which the commission condemns by making reductions from the maximum rates which the commission fixes.

Now, Governor Cummins repeatedly states that extortionate rates, as such, do not ordinarily exist; that the real evil is the discrimination between localities. Therefore, when he says the commission will only fix maximum rates he loses sight of the fact that that action would merely reach the evil which he says does not exist, and would not at all reach the evil which he says is widely prevalent, and that to reach the evil of discrimination between localities, of which he complains, the commission must make absolute or minimum rates, which will necessarily be rigid and unchangeable except by the order of the commission.

Nor is Governor Cummins correct in assuming that very few cases would be presented to the commission. He has a list himself, for the State of Iowa, which would doubtless occupy the commission for several years if it undertook to establish, according to its own judgment, the relative commercial importance of the cities in Iowa as compared with competing cities elsewhere. Moreover, when alalyzed, the basis of his complaint in almost every instance is found to be an adjustment of rates which does not give proper regard to distance. This will be found to be true, almost without exception, in all the cases of local discrimination. It is fair to assume, therefore, that every place that feels aggrieved by a relative rate adjustment which apparently fails to give full recognition to its geographical location will present its complaint to the commission, just as Governor Cummins seems preparing to present complaints for all the cities in Iowa. Consequently the commission's work will be enormously increased; the rates it makes to deal with such cases will necessarily be absolute or minimum rates, which can not be changed but by the commission's consent, and will therefore be rigid and inelastic; and, what is of equal or even greater importance, the rates established will to an increasing degree approximate a mileage basis—the basis which has always been adopted or approximated by every governmental rate-making tribunal, and a basis which the commercial interests of this country believe would be disastrous to them.

STATEMENT OF MR. EDWARD P. BACON, MAY 8, 1905.

HIS ERRONEOUS STATEMENTS AS TO DECISIONS OF THE COURTS AND ACTS OF THE CARRIERS.

Mr. Edward P. Bacon, in his statement to the committee on the seventeenth day, Monday, May 8, 1905, stated:

"The Supreme Court had declared emphatically in several cases that a court can not fix the rates in any way, and for that reason the commercial organizations have proceeded to endeavor to secure the power to be vested in the Interstate Commerce Commission to determine whether discrimination exists in the public tariff rates or not, and if it is found that discrimination does exist in those rates the Commission shall have the power to make such change in them as to prevent that discrimination."

The inference to be drawn from this statement is that if an adequate method of correction existed through the ordinary judicial channels the resort to the extraordinary method of having such contheories passed upon with practical finality by a mere Government bureau would not be insisted upon. It is obvious, from the discussions which have taken place before this committee, that Mr. Bacon is incorrect in his assumption that it is impossible to confer upon the judiciary ample control whereby reasonable and nondiscriminating rates may be secured for the future. Indeed, it has been made reasonably plain that the efficient enforcement of the present law would correct for the future all such unreasonable or unjustly discriminatory rates, but it is also clear that additional power can be conferred upon the courts if necessary.

Mr. Bacon stated that the rate-making orders of the Commission were generally complied with by the railroads during the first ten years of the Commission's existence, and argues that, as no disturbance in the general situation of rates or any commercial interests of any kind arose, therefore it is not dangerous to give the rate-making power to the Commission "positively and absolutely." As has been shown by an analysis of the Commission's report to this committee of its rate-making orders which were complied with and those which were only partially complied with or ignored, it is clear that Mr. Bacon is in error in saying that these orders were generally complied with. On the contrary, most of them were disregarded; some of them entirely and others partially. It seems that the carriers practically from the outset obeyed the orders or disregarded them according to their own views as to whether it was for their interest to do so. Of course, the results of such voluntary compliance signified absolutely nothing, especially when the most far-reaching and dangerous orders which the Commission made were ignored absolutely.

Mr. Bacon refers to what is known as the "Hay Case" (134 Fed. Rep., 942), and states that the court held that the Commission, in making its order, had exhausted its authority. The fact is that the Commission in addition to ordering the discontinuance of the practice of charging the fifth class rate on hay (which the Commission was undoubtedly empowered to order, if the facts justified it) went further and prescribed the affirmative thing which the carriers

should do for the future, thus going directly contrary to the decisions of the courts. It was the interpolation into the Commission's order of this affirmative feature that invalidated the order. The court, however, further suggested that if it were necessary to pass upon the facts it would hold that the charge of the fifth-class rate on hay was not unreasonable. Mr. Bacon also refers to the very recent order of the Commission declaring the rate on citrus fruits from California to be unreasonably high. He announces that the court will undoubtedly decide that the Commission has no authority to make such an order. In this Mr. Bacon is clearly in error. If the Commission has confined itself to ordering the discontinuance of existing rates, the courts will undoubtedly enforce that order unless the courts find that it is unreasonable on the facts.

Mr. Bacon refers also to the recent decision of the Commission that the advance in the rates on yellow-pine lumber from Mississippi, Alabama, Georgia, and Florida to the Ohio River was unreasonable, and ordering the discontinuance of the existing rate. Mr. Bacon states that that case was taken before the courts and the courts, declined to enforce the Commission's order on the ground that the Commission had exhausted its authority.

In making this statement of fact Mr. Bacon is entirely in error. No suit has been brought to enforce the Commission's order unless within the last few days, and certainly no court has decided that the Commission's order is not enforceable. A lumber association in Georgia brought suit to prevent the advance at the time it was made; the court held that it would be preferable for the Commission first to pass upon the matter, and held the case open awaiting the determination of the Commission. (See Tift *v.* Southern Rwy. Co., 123 Fed. Rep., 789.) An amended bill has, within the last few weeks, been filed in that case, seeking an injunction based upon the Commission's order, but no action has been taken.

Mr. Bacon's statement, therefore, of the results of recent orders of the Commission with respect to unreasonable rates fails to show any inefficiency in the present act when administered according to its plain terms. The failure in the hay case was due to a failure to follow the clearly established meaning of the law; and there has been no failure whatever in the citrus fruit case and the lumber case. It may be of interest to add that in the citrus fruit case one of the commissioners dissented, holding that the rate of $1.25 per hundred pounds was reasonable, and another commissioner practically held that the rate of $1.25 was reasonable, but that the transportation service was too slow and therefore the rate ought to be reduced; in the lumber case two of the commissioners dissented, holding that the advance in rates was reasonable.

Mr. Bacon's statement that the specific rates in this country have not declined, except in rare instances, and that during the past five years there has been a continuous advance in rates, first on one set of commodities, then on another, and then on another, is by no means correct. While class rates may not have been generally reduced in recent years, yet there have been continual reductions of very great importance through establishment of and reduction in commodity tariffs, and there have been some important reductions in class rates themselves. The "continuous" advance to which he refers does not

exist. A great many advances were made in the early part of 1900; some have been made since, but along with them there have been a very large number of reductions. The only two advances in the last five years through changes in classifications which have been condemned and ordered discontinued by the Commission were the advance in the hay rate and the advance in the rate on soap in less than carloads in official classification territory. The only other advance in rates that the Commission has condemned and definitely ordered discontinued is the advance on lumber rates above referred to.

Mr. Bacon says:

"The fact is that during the past twenty years—in fact, you may go further back than that—according to the statements of the Interstate Commerce Commission and according to all statistics that are available, there has been a constant and rapid increase in the proportion of low grades of freight which have been transported throughout this country."

The only definite or approximately authoritative statistics on this subject, for the country as a whole, of which I am aware, are the figures given by the Interstate Commerce Commission of classified tonnage originating on the various railroads. These figures are not given at all prior to the year ending June 30, 1899. Comparing that year with the last year for which the figures are available, the year ending June 30, 1903, we find that Mr. Bacon is entirely in error and that there has been a more rapid increase in the tonnage of high grade traffic than in the tonnage of low grade traffic, and consequently a decrease instead of a constant and rapid increase in the proportion of low grade freight. Mr. Bacon's contention, therefore, that this ought to result in reducing the average rate per ton per mile is without foundation.

Mr. Bacon makes the statement that there has been an increase of only 10.9 per cent in the aggregate tonnage of this country from 1899 to 1903. I understand Mr. Bacon arrived at this estimate by comparing the number of tons of freight carried in the year ending June 30, 1900, as shown in Senate Document 257, with the number of tons of freight carried in the year ending June 30, 1903, as shown in that same document. In doing this Mr. Bacon made two very serious errors. He used the year ending June 30, 1900, as the basis of comparison with the year ending June 30, 1903, whereas when he came to compare earnings he used the year ending June 30, 1899; and for the year ending June 30, 1903, he used only the preliminary estimate of the Commission, which was for only about 98 per cent of the total mileage, to wit, 1,221,475,948 tons, whereas the final estimate that was available many months ago showed the total tons carried for the year ending June 30, 1903, to be 1,304,394,323. Thus both of the factors of Mr. Bacon's comparison were wrong, even according to the basis chosen by him. The two factors which he should have used, according to his basis, were 959,763,583 tons carried in the year ending June 30, 1899, and 1,304,394,323 tons carried in the year ending June 30, 1903, or an increase of nearly 36 per cent in tonnage, instead of 10.9 per cent as figured by Mr. Bacon. But, as I pointed out in my original statement, the tons carried as figured by the Commission are a very unreliable basis of comparison, because they involve so many duplications and relatively involve more duplications in 1899 than in 1903.

The only approximately reliable basis is the number of tons carried 1 mile. The number of tons carried 1 mile in 1903 was 40 per cent over the corresponding figures for 1899. Making an allowance for the increase in mileage and taking the number of tons carried 1 mile per mile of line, the increase of 1903 over 1899 is 29.6 per cent. I am not aware of any other basis which is even approximately reliable.

Mr. Bacon refers to the advance in class rates from St. Louis to the Southwest. The committee is probably aware that this matter has been pending before the Interstate Commerce Commission for quite a long time without any decision.

Mr. Bacon says that "although the expense of operation has increased, it has not increased in proportion to the increase in tonnage." Of course the true comparison is whether the expense has increased in proportion to the increase in earnings. We find that the percentage of operating expenses to gross earnings was 65.24 per cent in 1899, while in 1903 it was 66.16 per cent, and according to the preliminary report for 1904 it was 67.75 per cent. Thus, notwithstanding the great increase in business and the great increase in revenue, there has been a still greater relative increase in expenses. The revenue per train-mile in 1903 increased over the corresponding figure in 1899 27.2 per cent, while the cost per train-mile increased in 190[illegible] over 1899 28.6 per cent.

"NATURAL ADVANTAGES" AND THE MILEAGE BASIS.

Mr. Bacon says:

"I submit to the committee whether in its opinion it would be just and right for any commission or any governmental regulating power to undertake to divest any locality of an advantage which accrues to it from its geographical position or from an expenditure that that locality may have made to increase its facilities for the handling of property. * * * That course has been pursued uniformly in this country from the time of the establishment of the Commission to the present time, and very properly, and nobody has made any objection to it or found any fault with it with the exception of perhaps a few localities that are under a natural disadvantage that feel that they ought to be relieved of those disadvantages by a commission."

These statements of Mr. Bacon undoubtedly indicate the principles upon which any governmental rate-making bureau would proceed, and the inevitable result of procedure upon those principles would be to realize the unfortunate consequences that are found in Germany, where each place has the so-called advantage of its geographical location, with the result that the more remote localities are utterly unable to market the products of the soil by rail. Mr. Bacon deprecates anything approaching a distance tariff and says that the universal interests of the country are very much opposed to anything of that sort; and yet the very principles which he correctly shows that a governmental tribunal would observe would inevitably lead to a tariff of that sort. The result would undoubtedly be that interior communities, and especially interior agricultural communities, would be gradually forced into a position of geographical disadvantage. If

a governmental rate-making tribunal had been in existence in the earlier days, when the farmers of New York, Pennsylvania, and Ohio were objecting to the low rates afforded to the farm products of the Northwest, it would no doubt have been governed by the principle of geographical advantage, which Mr. Bacon says ought to govern it, and the result would have been most unfortunate for the great agricultural regions of the Northwest, and would no doubt have very much retarded their development.

Of course no one railroad can, under the present law, build up one of its communities at the expense of another where both of them are dependent upon it; but it can give all its communities, no matter how remote from the markets, all the advantages in the way of cheap rates that it is able to give, and the result of Mr. Bacon's contention is that a restraining power should be put upon the railroad's ability thus to build up the communities in which it is interested.

LOCAL DISCRIMINATIONS CAN NOT BE CHANGED EXCEPT BY A COMMISSION WITH POWER TO FIX MINIMUM OR ABSOLUTE RATES.

Mr. Bacon refers to his controversy against the grain interests of Minneapolis. This makes it proper to show from the statements of the Commission itself exactly what was involved, and I therefore quote from the opinion of the Commission as follows:

"There is an underlying feature of this controversy which we have not overlooked. The competition between places and between carriers throughout the whole territory in question is of a double character. Minneapolis has various railroads reaching into this wheat-producing region which are competing with each other. Milwaukee has various railroads leading into the same region which likewise compete with each other. Besides this ordinary form of railroad competition, there is competition between the railroads as a whole that lead to Minneapolis, on the one hand, and those on the other hand that lead to Milwaukee. The effects of this latter competition are apparent in this case. The elements of the group of roads leading to Minneapolis (except the Chicago, Milwaukee and St. Paul) have no direct interest in and owe no duty to Milwaukee; and with the same exception the roads leading to Milwaukee have no direct interest in and owe no duty to Minneapolis. The Burlington, Cedar Rapids and Northern has an interest in both places, though it reaches neither of them. Between the two groups, considering each as a whole, there is a clear diversity of interest. It is obvious that any reduction by the carriers to Milwaukee can be met by a corresponding reduction by the carriers to Minneapolis. In other words, the latter have it in their power, if they see fit, to maintain the present differentials, because they are legally free to make the same changes in Minneapolis rates as the former may make in Milwaukee rates." (Chamber of Commerce *v.* Chicago, M. and St. P. R. R. Co., 7 I. C. C. Reports, 510, decided January 19, 1898.)

In the Commission's twelfth annual report, for 1898, it refers to this case as follows (p. 24):

"In Milwaukee Chamber of Commerce *v.* Chicago, Milwaukee and St. Paul Railway Company et al. the Commission found that the rates on grain to Milwaukee and Minneapolis resulted in subjecting

Milwaukee to undue prejudice and disadvantage, and a summary of conclusions at the end of its report included a ruling determining the proper relation of the rates to Milwaukee and Minneapolis. The Commission added, however, that 'under such circumstances as are disclosed in this case the authority of the Commission, as that authority has been defined and restricted by the Supreme Court, does not permit us to require the affimative action contemplated in the foregoing summary,' and that it could only adjudge and determine that the rates then maintained by the defendant carriers were unlawful. This was a case where exercise of the power to fix the minimum reasonable rate was indicated, as most of the carriers to Minneapolis were not carriers to Milwaukee, and it was obvious that any reduction of rates by the Milwaukee roads could be met by corresponding reduction on the lines to Minneapolis."

Thus the Commission clearly indicated that it could not deal effectively with that situation unless it had the power to prescribe the minimum rate to Minneapolis which could not be reduced by the railroad companies to that point. This was a power which the Commission had never claimed to possess and which it decided very early in its existence that it did not possess. (See In re Chicago, etc., Ry., 2 Int. Com. Com. Rep., 231, 261.) Such a situation could only be dealt with by the Commission through the exercise of the power to fix a minimum or absolute rate, which power was attempted to be conferred by the Townsend bill. It is interesting to note that Mr. Bacon now qualifies his approval of the Townsend bill by saying that he is opposed to the inelasticity which would result from that measure and therefore prefers that the Commission should be empowered only to prescribe a maximum rate; but the possession of this power by the Commission would leave it as helpless as it always has been to deal with the very case which Mr. Bacon wishes disposed of by the Commission.

This point is also illustrated in what is known as the Eau Claire Case, which has been referred to frequently.

The Interstate Commerce Commission said of that case in its Eleventh Annual Report for 1897 (pp. 24, 25):

"There is, moreover, one class of discriminations which we have never possessed the power to effectually correct, even while we assumed the right to fix the maximum rate. We refer to that class of cases where the differential in question is to be maintained by independent lines as well as by a common line. What is meant will be better understood by referring to an actual case in which the difficulty experienced arose, viz, The Eau Claire Board of Trade *v.* The Chicago, Milwaukee and St. Paul Railway Company and others (5 I. C. C., 264).

"The complaint in that case was that the lumber rates from Eau Claire, Wis., were too high to common markets as compared with those from Winona and La Crosse. The case was elaborately tried, and the Commission decided that the complaint was well taken, that the then existing differential was too high, and that a prescribed differential should not be exceeded. The justice of this decision was pretty generally conceded by the carriers themselves.

"As soon as the order was promulgated the Chicago, Milwaukee and St. Paul Railway Company, which extended from both Eau Claire

and Winona and La Crosse to these common markets, reduced the rate from Eau Claire so as to correspond with the order of the Commission. Thereupon the lines leading from Winona and La Crosse, but not touching Eau Claire, immediately reduced their rates by an equal amount, so as to maintain the same differential between Eau Claire and those cities, and they gave out that any further reduction of rate upon the part of the Milwaukee road from Eau Claire would be followed by a corresponding reduction in rates by them from Winona and La Crosse. Apparently the only thing that the Milwaukee road could do was either to engage in a rate war, which would unsettle lumber rates in all parts of the country, or decline to obey the order of the Commission. Since it had nothing to lose by the latter course, it very wisely, from its standpoint, adopted that. It has several times since endeavored to secure the consent of the other carriers to the putting in of this rate, but hitherto has failed to do so. Eau Claire is still suffering from the effects of this discrimination, although the third section of the act to regulate commerce expressly declares that such discriminations shall not exist.

"This instance is not by any means an isolated one. The most bitterly contested cases now pending before us are of exactly that character, and precisely the same difficulty will be met in attempting to enforce any order which the Commission may make. It is possible that some method may be devised under the law as it is to compel a compliance with such an order. We merely call attention to the fact that hitherto no means have been found, and suggest that the remedy by legislative enactment is simple.

"The power to fix a maximum rate, or, in other words, the power to reduce a rate, is of no avail in this case, since a reduction of the rate from Eau Claire is met by a corresponding reduction of the rate from Winona. What is necessary here is the right to fix a minimum rate—to say that the carriers shall not charge below a certain rate from Winona and La Crosse."

On the eighteenth day of the hearings—Tuesday, May 9, 1905—Mr. Bacon resumed his statement.

MR. BACON WANTS A GOVERNMENT BUREAU TO LEGISLATE UPON QUESTIONS OF PUBLIC POLICY.

Mr. Bacon's reference to the export rates on wheat and flour constitute an additional illustration of the extremes to which he is willing to go while insisting that he is very conservative. Under the present law an unreasonably high rate on export flour can undoubtedly be prevented; and a railroad can also be prevented from making the difference between the rates on export flour and export wheat greater than is actually necessitated by controlling competition. It is everywhere recognized and is made clear by Mr. Bacon's testimony that the competitive conditions affecting the exportation of flour and wheat are very different; that the acute competition of the Gulf ports, which materially affects the export rate on grain, does not correspondingly affect the export rate on flour, because flour is not ordinarily exported via the Gulf. But Mr. Bacon is not content that this matter shall be settled according to uncontrollable commercial conditions and that the railroads shall simply be prevented from

charging unreasonably high rates on export flour and from making any greater differentials in favor of export wheat than are necessitated by actual competition. Mr. Bacon wishes to go further than that and to create a Government bureau which shall sit in judgment on the comparative rights of the American farmers and the American millers and decide how far American farmers shall have the benefit of competitive conditions which favor their product and widen their market, and how far that benefit shall be restricted and artificial conditions substituted, so as to increase the advantage of the American millers and correspondingly diminish the advantages of the American farmers. Mr. Bacon frankly admits that what he desires would be detrimental to the producers of wheat while advantageous to the American millers. It is difficult to describe adequately the power which Mr. Bacon thus seeks to have created. It is a power to substitute the views of a Government bureau for the competitive trade conditions prevailing throughout the world; it is to submit to the practically final judgment of a majority out of 5 or 7 men the question of business policy how far natural conditions shall be subverted and artificial conditions substituted, so as to change the relative status and prosperity of different classes of the American people. As I have already stated, there is no doubt whatever but that any railroad company can under the present law be restrained from going beyond a strict observance of competitive conditions and prevented from making any arbitrary discriminations simply according to its own wishes. Beyond that the qestion is whether these matters shall be regulated by the great laws of trade or by the views of a Government bureau. Mr. Bacon prefers the views of the Government bureau and wishes that bureau to be empowered to decide whether these laws of trade result in "undue injury to a certain class of people or not," and to effectuate that decision by suspending to a greater or less degree the natural operation of these laws of trade.

Mr. Bacon frankly admits that the powers of this tribunal are to go beyond mere rate questions and are to settle "questions of public policy." It has always been regarded as a supreme exercise of the essentially legislative function to decide to what extent the laws of trade should be interfered with by the imposition of protective duties for certain classes of the public. No one has ever suggested that the decision of such paramount questions of public policy should be delegated to a Government bureau. The questions which Mr. Bacon discusses are precisely of the same character and of equal public importance. If there is to be any action interfering with the free play of commercial conditions, which now determine the relative advantages of American farmers and American millers, it would seem that that interference ought to be by the direct act of Congress, and that the settlement of the grave questions of public policy involved should not be delegated to an administrative bureau.

Under the present law such matters must be regulated according to law and according to existing commercial conditions not created by the railroad. To go beyond that is to empower the Commission to make the law itself and to establish and change public policy, and that seems to be what Mr. Bacon advocates.

The sectional and class character of the controversies concerning public policy which would under such a power be submitted to the

Commission are emphasized by Mr. Bacon's statement, which I believe is correct, that the present movement for the rate-making power "originated primarily with the National Millers' Association, who sought the amendment of the act in the protection of their own individual interests." Of course, the primary movement for the rate-making power came from the Commission itself, in 1897; but I believe Mr. Bacon is correct in stating that it was primarily taken up, from a commercial standpoint, by the millers' association. It would seem that if any class of people desire "protection" beyond that of requiring the railroads simply to deal fairly with the public—to make no discriminations except those required by legitimate commercial conditions and to impose no rates that are extortionate—that class of people ought to seek "protection" by a direct act of Congress, and ought not to expect Congress to delegate legislative powers to an administrative bureau, to enact at its pleasure "protective" legislation.

If Congress gives the Commission the power sought—to fix rates upon complaint—the practical result will be, no matter how the grant of power may be qualified or restricted, that the Commission will proceed to inject its views on these questions of public policy into the freight rates of the country. There will be no escape from it and no help for it. No matter how wide a power of judicial review is given, the courts can not be mind readers and set aside the orders of the Commission because the Commission has been influenced by its own views of what ought to be public policy. The courts will be bound to resolve every doubt in favor of the Commission's orders, and even though those orders may have been prompted by a motive not permitted under the grant of power, still, unless the orders are plainly in conflict with the motives which could legitimately have governed, the courts will be bound to uphold them.

Nor can it be said that at present it is left to the railroads to determine these questions of public policy. These questions are now determined by the laws of trade. The railroads simply recognize the competitive conditions that exist. If the railroads go beyond that and make arbitrary discriminations, such acts can be fully prevented by the efficient enforcement of the present law, or, at any rate, by the efficient enforcement of a law proceeding upon the same principles while providing more effective machinery.

On the twenty-fifth day, Wednesday, May 17, 1905, Mr. Bacon resumed his statement.

EXTENT OF PROPOSED RATE-MAKING POWER.

Mr. Bacon is emphatic that the commercial interests of the country will strongly oppose any grant of power which would result in any widespread fixing of rates by the Interstate Commerce Commission. He insists that there would be no such widespread making of rates, because he says if the power existed its operation would be found to be to a large extent automatic; that the mere existence of the power would exert a restraining influence upon the carrier. But he reiterates that the real evils of which he complains are discriminations "between different localities and different commodities, between local and through traffic, between carload and less than carload lots, and

between domestic or export and import traffic." It is impossible to see how a rate-making power could operate automatically on such questions as these. If the railroads undertook to change long-standing adjustments between different localities or classes of traffic, it would start just as many complaints as it would stop and probably create complaints where none now exist. It is clear that all such discriminations that are complained of would be brought before the Commission, and in the long run it would be forced either to approve the rate adjustments now existing and dismiss the complaints or to make rates on a very general scale and to prescribe absolute or minimum rates in order to enforce its decisions as to the relative rights of competing localities. Mr. Bacon's solace, therefore, of an automatic regulation which will keep the Commission from exercising the power which he wants Congress to give to the Commission would prove entirely illusory.

ORDERS OF THE COMMISSION UP TO 1896.

Mr. Bacon filed Senate Document No. 30, Fifty-fourth Congress, second session, showing in detail the orders made by the Interstate Commerce Commission up to August, 1896. This lengthy statement does not advance Mr. Bacon's argument. No one denies that the Commission made numerous rate-making orders, and that some of them were complied with by the carriers. It is equally beyond denial that many of them were never complied with. Of the 41 strictly rate-making orders which the Commission made up to 1897 the carriers only fully complied with 15.

This document affords a striking illustration of the character of the "partial compliance" on the part of the railroads with some of the Commission's rate-making orders. Case No. 256, "In re alleged excessive freight rates on food products," decided July 19, 1890, constituted, perhaps, the most extensive rate-making order which the Commission ever attempted, except the Social Circle Case (Case 245, James & Mayer Buggy Company, decided June 29, 1891), and the Cincinnati and Chicago Freight Bureau Cases (Cases 322 and 323, decided May 29, 1894), both of which latter orders were wholly ignored by the carriers. It appears that October 1, 1890, the railroads, in partial compliance with the Commission's order as to rates on food products, reduced the rates to a point near the figures ordered by the Commission, but that three months and fifteen days later, or on January 15, 1891, the railroads advanced the rates to a higher figure than they were when the Commission ordered the reduction, and that the rates stayed at this higher figure for over two years, and that then, on May 10, 1893, the rates were advanced to still higher figures and remained at the higher figures until July 26, 1896, when, of their own accord and, doubtless as the result of changed conditions, the railroads reduced their rates to materially less than the rates the Commission ordered. Such a case shows the insufficiency of Mr. Bacon's favorite argument—that the Commission exercised its rate-making power with such distinguished public satisfaction in the early years of its existence. The much-vaunted compliance with the Commission's rate-making orders in the early years thus turns out to be to a very large extent a purely optional and temporary compliance, according to the views of the carriers.

The cases contained in this document furnish numerous illustrations of the fact that most of the complaints that arise as to rates grow out of discriminations, and illustrate the further point that ordinarily there would be no sort of difficulty in dealing with these discriminations by direct proceedings in court. If the court finds that two places or two commodities ought to have the same rate, it is impossible to see why the court has not the power under the Elkins law, as construed by the Supreme Court of the United States, to enjoin absolutely the continuance of that discrimination, subject, of course, to a change in the rate adjustment upon a sufficient change in conditions.

Complaints of Shippers.

In the hearing for the seventeenth day, Monday, May 8, 1905, appears a letter from W. K. Phillips, of Nashville, Tenn., to Senator Carmack, making various complaints about rates. It is evident that Mr. Phillips is not aware that the rates of which he complains are subject to adequate investigation and correction under the present law if, in fact, they work an unjust discrimination against Nashville. Since the passage of the Elkins Act there has been an especially speedy method of securing final and effective action by the court in such cases. Mr. Phillips's letter is a striking illustration of what is no doubt a general condition. The persons who conceive that they have grievances against the railroads have been led to believe that the present law affords absolutely no remedy, whereas the present law affords a very effective remedy if it is promptly and intelligently enforced. Mr. Phillips's letter is also interesting as showing a pronounced tendency in favor of a tariff increasing according to distance where such tariff would be to the interest of the city of Nashville. There are doubtless many cases where the application of such a principle would prove most disastrous as to the business interests of the city of Nashville.

Mr. A. M. Aiken appeared before the committee on the seventeenth day, Monday, May 8, and presented a paper, signed by some of the municipal authorities of the city of Danville, Va., complaining of the rates to Danville as compared to those to Lynchburg. This is a matter which has received full consideration according to law by the tribunals provided by law. The Interstate Commerce Commission held that the rates to Danville should be no higher than those to Lynchburg, and so ordered. The United States circuit court and the United States circuit court of appeals, however, found that the rates to Lynchburg were established by conditions over which the Southern Railway had no control, and that, consequently, when the Southern Railway met those rates at Lynchburg and carried traffic to Lynchburg at those rates this was no violation of the law and was no injury to Danville so long as the rates to Lynchburg were more than the mere additional cost of handling that particular traffic and so long as the rates to Danville were just and reasonable. The courts further held that the only remaining question was whether the rates to Danville were unreasonably high, and after careful examination of the evidence and comparison with other rates put in evidence for places similarly situated those courts reached the

conclusion that those rates were not unreasonably high. It is difficult to see how the result of this controversy can suggest the necessity for additional legislation. The duly established courts of the land have held that the rates to Danville are not unjustly high or unjustly discriminatory, and it would seem, therefore, that the persons making this complaint ought to acquiesce in this decision of the courts. If the decision of the courts had been contrary to the railroads, they would have been bound to acquiesce in it.

The decisions of the courts in the Danville Case are Interstate Commerce Commission *v.* Southern Railway, 117 Fed. Rep., 741 (C. C.); Same *v.* Same, 122 Fed. Rep., 800 (C. C. A.). If an appeal was taken to the Supreme Court by the Commission it was not prosecuted to a conclusion.

In his statement on May 17, 1905, Mr. E. P. Bacon, submitted a complaint, signed by J. E. Evans, for himself and E. R. Burkholder, as committee from the Southern Lumber Dealers' Association on railroad rates. This complaint related to the rates on lumber from Texas, Louisiana, and Arkansas to Oklahoma and central and western Kansas as compared with the rate to Kansas City and Omaha, and referred especially to the rates to Wichita and Emporia as compared with the rates to Kansas City and Omaha. This committee argues the matter at some length in the complaint, which Mr. Bacon incorporated in his statement, the argument going directly to the position that rates ought to be adjusted substantially on a mileage basis.

This complaint of the lumber dealers' association again emphasizes the very striking disposition of many shippers throughout the country to seize upon apparent grievances which are capable of complete correction under the present law and to make such grievances the demand for a radical increase in the powers of the Commission. If these rates to which this committee of the lumber dealers' association refers are unreasonable or unjustly discriminatory, they are susceptible of adequate correction under the law as it stands to-day. In fact, the complaint as to the disparity between rates at Wichita and Kansas City was made the basis of a proceeding before the Interstate Commerce Commission. The Commission found that there was a substantial and controlling competition at Kansas City which did not exist at Wichita and which justified a lower rate to Kansas City than to Wichita. The Commission further found, however, that the rate to Wichita was unreasonable by 1 cent, this decision being rendered on October 24, 1903. I understand that the Commission's decision in this case was complied with by the railroads.

Thus the complainants take up a ground of complaint which has been disposed of by the Commission and where the rates have been made according to the decision of the Commission, and utilize that ground of complaint as a reason for giving the Commission more power.

On the twenty-fifth day, Wednesday, May 17, 1905, appears a communication from the E. R. Wagner Manufacturing Company, of North Milwaukee, Wis., which shows that rates are so adjusted as to enable that company to sell its product in all parts of the country, but that it is objecting to rate adjustments which permit competing concerns to sell in the surrounding States. The statement submits various rates and distances, and in effect argues for rates based prac-

tically on mileage. The statement fails to show that any effort has been made to utilize the present law for the correction of any unreasonable or unjustly discriminatory rates.

In the hearing for the twenty-sixth day, Thursday, May 18, 1905, appears a communication from the Western Pine Shippers' Association, which likewise virtually insists upon rates being made according to distance, and which seizes upon the extraordinarily low rate on lumber from the Pacific coast to St. Paul of 40 cents per 100 pounds as an argument for making still lower rates for less distances although such lower rates are not necessitated by commercial conditions. Here also it does not appear that there has been any effort to resort to the present law for the correction of the rates complained of.

On the twenty-eighth day, Saturday, May 20, 1905, Mr. William A. Hover made a statement before the committee as the representative of commercial organizations at Denver, Colo. This statement likewise was based practically upon a demand for rates according to mileage, and an extensive series of complaints on the part of Denver as against competing distributing centers in every direction. It was not claimed that there had been any effort to invoke the machinery of the present law for the correction of any of these complaints.

All these complaints on the part of shippers disclose a feature which characterizes most of the support for the rate-making power, and that is that most of those supporting the proposed rate-making power have in mind that in some way or somehow, if the rate-making power is given to the Commission, it is going to establish rates on approximately a mileage basis; and this idea is undoubtedly well founded, in view of the disposition of the Commission in the past and of the generaly policy of all governmental rate-making tribunals.

These complaints further strikingly emphasize the tremendous scale on which the Commission will be called upon to act if the rate-making power is conferred upon it. Clearly there is hardly a point of commercial importance in the country that will not appear either as a complainant or a respondent before the Commission. The claim that the Commission will have occasion to pass upon but few cases seems absurd in view of the many years' work which seems to be already mapped out for the Commission by the gentlemen who are supporting the proposition to give the Commission the power to make rates upon complaint.

Moreover, these cases of local discrimination are the very cases which will call for rate-making of a general character, involving the readjustment of rates in every direction, and will require, in order to accomplish what is desired, the exercise by the Commission of the power to make minimum or absolute rates, thereby giving to the rate adjustments of the country the rigidity which even the supporters of the rate-making power deplore.

Statement of Interstate Commerce Commissioner Prouty.

Mr. Prouty, in his statement before the committee on the twenty-sixth day, Thursday, May 18, 1905, declared that under the present law "neither the Commission nor the court nor anybody else has any power to say with respect to the future whether a rate is reasonable or unreasonable—whether a discrimination is due or undue—and

therefore we have no power to make any order in the premises," and further declared that the Supreme Court had never yet decided that the Commission could, through the courts, compel the discontinuance for the future of an unreasonably high rate.

THE PRESENT LAW AS APPLIED BY THE COURTS.

Section 15 of the interstate-commerce act expressly empowers the Commission to order a carrier to cease and desist from any violation of that act; and section 16 expressly empowers the circuit court, sitting in equity, to issue a writ of injunction or other proper process, mandatory or otherwise, at the suit of the Commission or any company or person interested, to restrain such carrier from violating or disobeying any lawful order or requirement of the Commission, and to enjoin obedience to the same. The act prohibits every unjust and unreasonable charge and every unjust discrimination or undue preference. Therefore whenever a carrier establishes and charges a rate unreasonably high or establishes and enforces any rate adjustment which constitutes an unjust discrimination or undue preference, it violates the law; and the act expressly provides for compelling, through judicial process, the discontinuance of every such violation. The enforcement of an order to cease and desist from violating the law necessarily relates to the future. It is difficult, therefore, to see any basis for Mr. Prouty's contention that no power exists to compel for the future the discontinuance of a rate unreasonably high or of an unjust discrimination or undue preference.

Because the courts have held that fixing rates for the future through an administrative board is a legislative function, Mr. Prouty seems to draw the conclusion that a court is utterly helpless to do anything in the enforcement of the law which would have either a direct or an indirect effect on rates for the future. This is a conclusion which is not warranted by the decisions which refer to rate making for the future by a commission as a legislative act. But beyond that the courts have repeatedly made and enforced orders which did require a change of rates for the future, and the power of the court to prevent for the future any rates which are in violation of law is certainly not an open question at this time.

The rates made by State railroad commissions are admittedly made in the exercise of a legislative function, yet the courts have repeatedly ordered and enforced the discontinuance for the future of these admittedly legislative rates when they were in violation of the Federal Constitution. This jurisdiction is so well known and so repeatedly exercised as to need no citation of authorities. Reagan *v.* Farmers' Loan and Trust Company (154 U. S., 362), Covington and Lexington Turnpike Road Company *v.* Sandford (164 U. S., 578), and Smythe *v.* Ames (169 U. S., 466) are familiar instances of the actual exercise of this power for the future which have been approved and enforced by the Supreme Court of the United States. Certainly, if the courts have the inherent power to prevent the enforcement for the future of rates made by governmental authority which are unlawful, it is wholly unreasonable to say that there is an inherent disability in the courts to prevent the enforcement for the future of rates made by a railroad company which are unlawful.

There are, moreover, repeated instances where the courts have,

under the interstate-commerce act, compelled the discontinuance for the future of rates or rate adjustments which were found to be unlawful.

In the so-called Social Circle Case, the Commission found that a greater charge for the shorter haul was made under substantially similar circumstances and conditions with a less charge for the long haul, and ordered the discontinuance—necessarily for the future—of this violation of the law. This order was enforced by the Supreme Court of the United States, and the mere fact that the court's decree had a future operation and compelled a change for the future in the rates of the carrier, so as to prevent a continued violation of the law, did not suggest to the Supreme Court any judicial disability in the premises. (See Interstate Commerce Commission *v.* Cincinnati, New Orleans and Texas Pacific, 162 U. S., 184, decided March 30, 1896.) The fact that this case involved a violation of the long and short haul section can not affect the principle. The law prohibits charging more for a short than for a long haul in the same direction, the shorter being included in the long haul, under substantially similar circumstances and conditions. The law also prohibits charging more than a reasonable rate. The one prohibition is just as strong as the other. A violation of the one is just as unlawful as a violation of the other. If there is an inherent disability in the judiciary which prevents it from compelling for the future a discontinuance of a rate that violates the prohibition against charging unreasonably high rates, there is precisely the same disability against compelling for the future the discontinuance of a rate or rate adjustment which violates the law against charging more for a short haul than a long haul.

There have been numerous cases where the lower courts have decreed the discontinuance for the future of rates found to be unreasonably high or in violation of some other provision of the interstate-commerce act, and while these cases have been reversed by the Supreme Court the Supreme Court has never suggested as a ground of reversal that the lower court was without power to compel the discontinuance for the future of the rate or rates involved. On the other hand, the Supreme Court seems in every one of these cases to have assumed that if the rate or rates involved had been in fact in violation of the statute and had been condemned upon a consideration of the proper evidence the decree compelling their discontinuance for the future would have been proper. Such cases are: Interstate Commerce Commission *v.* Detroit, Grand Haven and Milwaukee Railway (U. S. circuit court), 57 Fed. Rep., 1005, reversed by the circuit court of appeals, 74 Fed. Rep., 803, and by the Supreme Court, 167 U. S., 633; Interstate Commerce Commission *v.* Texas and Pacific Railway, Commission's order enforced for the future by the circuit court, 52 Fed. Rep., 187, and by the circuit court of appeals, 57 Fed. Rep., 948, but condemned by the Supreme Court, 162 U. S., 197; Interstate Commerce Commission *v.* E. T. V. and G. Ry., Commission's order enforced by the circuit court, 85 Fed. Rep., 107, and by the circuit court of appeals, 99 Fed. Rep., 52, but condemned by the Supreme Court, 181 U. S., 1; Behlmer *v.* Louisville and Nashville Railroad Company, Commission's order enforced by circuit court of appeals, 83 Fed. Rep., 898, but condemned by the Supreme Court, 175 U. S., 648.

In the case of Interstate Commerce Commission *v.* Louisville and Nashville Railroad Company the United States circuit court for the southern district of Alabama sustained the Commission's finding that the rates involved were unreasonably high, in violation of the first section of the interstate-commerce act, and entered a decree requiring the discontinuance of those rates for the future (102 Fed. Rep., 709). The circuit court of appeals and the Supreme Court reversed that decree (108 Fed. Rep., 988, and 190 U. S., 273), but neither questioned the power of the circuit court to enter that decree if the rates had been in fact in violation of the first section.

But the precise question as to a rate unreasonably high has been directly presented to the courts and directly decided in what is known as the "Cattle Raisers' Association Case." In that case the Commission found the terminal charge at Chicago, on interstate shipments of live stock, to be unreasonably high and therefore in violation of the first section of the interstate-commerce act, and under section 15 of the act ordered the discontinuance of that rate. Under section 16 of the act the Commission brought suit to enforce the order. The petition was demurred to on the ground that a decree enforcing the order would necessarily affect the rate for the future and therefore indirectly make a maximum rate for the future, which it was claimed would be the exercise by the court of a legislative function. This demurrer was overruled by the circuit court, which held that the Commission's order and the decree of court enforcing that order were authorized by law. (See Interstate Commerce Commission *v.* Chicago, Burlington and Quincy, 94 Fed. Rep., 272.) The circuit court subsequently found on the facts that the terminal charge was not in violation of the first section of the act, and for that reason alone refused to enforce the Commission's order. (See Interstate Commerce Commission *v.* Chicago, Burlington and Quincy, 98 Fed. Rep., 173.) The circuit court of appeals affirmed the decision of the circuit court. (Interstate Commerce Commission *v.* Chicago, Burlington and Quincy, 103 Fed. Rep., 249.) The Supreme Court of the United States (Interstate Commerce Commission *v.* Chicago, Burlington and Quincy, 186 U. S., 320) likewise held that the Commission's order was not in accordance with the facts as to a material part of the traffic involved, but it did not dispute the power of the Commission to order and the power of the court thereupon to decree the discontinuance of the $2 terminal charge upon the traffic upon which that charge was unreasonable. On the contrary, the Supreme Court expressly declared "that nothing in the decree refusing to execute the order of the Commission should be construed as preventing that body, if it deems it best to do so, from hereafter commencing proceedings to correct any unreasonableness in a rate resulting from the additional terminal charge," with respect to the traffic upon which the terminal charge could properly be regarded as unreasonable. If the Supreme Court had been of the opinion that the Commission and the court were without any power to compel the discontinuance for the future of an unreasonably high rate, manifestly the Supreme Court would not have put such a reservation in its opinion. Inasmuch as in this case the Supreme Court expressly recognized the right of the Commission to correct for the future "any unreasonableness in the rate," I do not think Mr. Prouty is justified in his statement that the Supreme Court has never yet decided that the Commission could exercise this power for the future.

Mr. Prouty says that in this case "the decision of the Commission on the question of fact was sustained" by the Supreme Court. That court said: "The issue involved was the reasonableness of the rate." It pointed out the inconsistency in the Commission's conclusions and that the Commission was trying to maintain "two absolutely conflicting propositions at the same time." The court announced that it was "constrained to the conclusion that the order of the Commission was not sustained by the facts upon which it was predicated."

Mr. Prouty's assumption that there is no effective remedy under the present law for the Kansas millers who had their rate on corn meal to Texas arbitrarily raised seems utterly inconsistent with the provisions of the interstate-commerce act as applied by the courts.

Thus the power of the courts acting upon an order of the Commission to compel for the future the discontinuance of any rate or adjustment of rates which is found to be in violation of the interstate-commerce act is expressly given by that act and has been repeatedly recognized and acted upon by the courts of the United States, including the Supreme Court.

Mr. Prouty concedes that if a carrier were once required by law to establish a new rate, found by the proper tribunal to be necessary in order to comply with the act, the good faith of the carrier would be sufficient to keep that rate in force until conditions changed, even though the law might permit the carrier to change that rate the next day. Mr. Knapp, the chairman of the Commission, said in his statement before the committee, on the twenty-eighth day, that if a court or other duly authorized tribunal simply decreed the discontinuance of the existing rate or rate adjustment found to be unlawful, "I do not believe any railroad manager would make, under such a theory as that, a nominal change in a rate for the purpose of technically complying with an order to cease and desist."

No person has cited an instance where such an evasive compliance with an order of this Commission has been attempted.

It therefore results that there is a very substantial remedy expressly provided by the present law, fully recognized and applied by the courts, which has never yet proved insufficient, where rates were actually in violation of the law.

ACTION OF A RATE-MAKING COMMISSION WOULD BE LARGELY ARBITRARY AND VERY GENERAL.

Mr. Prouty admits that a rate made by a rate-making commission "must finally go a long way toward being taken as right. In my opinion there is no way in which you can protect the railroads of this country from an erroneous decision of that commission within particular broad limits. Of course there are limits within which you can and limits within which you can not. Anything outrageous can be stopped, anything manifestly wrong can be stopped, but anything that is a little wrong or partly wrong I do not believe can be stopped."

This language strikingly shows the wide margin of discretion that will inevitably be given to the Commission if vested with the power which is sought. It is perfectly clear that as a practical matter the much-talked-of judicial review of the Commission's rate-making orders would be available only in outrageous or extreme cases, leaving the Commission, within broad limits, to apply its own theories

of business policy and public policy, free from any effective control in any quarter. Thus there are two vital distinctions, from a public standpoint, between rates made by a railroad company and those made by an administrative bureau. First, the railroad company, being charged with the direct responsibility for the success of the railroad, is bound to base its action upon stubborn facts—it can not and does not make rates upon theories; whereas a rate-making commission not directly charged with responsibility for the property can, and generally does, proceed rather upon mere theories than upon the precise facts which apply to particular cases. Therefore the direct action of the railroad is likely to be far more in accord with commercial conditions and far less arbitrary than the action of the Commission. Second, the Commission, being a governmental body, is not subject to correction except when, as Mr. Prouty says, its action is outrageous. On the other hand, no such sanctity attaches to the action of a railroad company; if it does anything arbitrary or oppressive or in any way violates the law, the courts can and will, under an efficient system, prevent such unlawful or injurious action.

Mr. Prouty announces that to give the Commission the rate-making power is not tantamount to investing that tribunal with the power to fix the interstate rates of this country, and insists that there is not the slightest analogy between the two propositions. He seeks to prove this by discussing what actually happened when the Commission assumed the power to fix rates. He cites three or four cases where the Commission assumed to exercise that power, and says there was no overturning of commercial conditions; that the exercise of the power produced very little effect on the railroad operations of the country.

I know of no better or more reliable index to the extent to which a power of this sort would be exercised and of the inevitably rapid growth of the pretensions of any rate-making commission than is afforded by the efforts of the Interstate Commerce Commission during the early years of its existence.

In Mr. E. P. Bacon's statement on the twenty-fifth day, Wednesday, May 17, 1905, is incorporated Senate Document No. 30, Fifty-fourth Congress, second session, containing a list of the orders made by the Commission. It will be observed that the first rate-making order was made on December 3, 1887, and in that case the Commission, after full investigation, changed the rate on a single commodity from one point of shipment to one destination *until the 30th day of June, 1888.* From time to time thereafter the Commission changed rates between specified points on lumber, on pearline, on hub blocks, on oil, and on cotton. On July 19, 1890, it made a far more extensive rate-making order than it had ever attempted before, requiring marked reductions in the rates on wheat, corn, oats, and flour from Missouri River points to East St. Louis and Chicago. The carriers partially complied with these rates for three months and a half and then made their rates higher than the rates the Commission had condemned, and kept them there for several years. The Commission from time to time made other rates, many of them being disregarded by the carriers, and on June 29, 1891, arrived at the point in the James & Mayer Buggy Company case where, in a complaint that the rates on *buggies* from Cincinnati ought not to be as much to Atlanta as to Augusta, and ought not to be more to Social Circle, an inter-

mediate point, than to Augusta, it proceeded, upon the testimony of a single witness, to reduce the rates not only on buggies, but *on all other articles in the first class in the southern classification, several hundred in number*, between Cincinnati and Atlanta to a lower figure than the single witness said was reasonable. This order was wholly ignored by the carriers, and if enforced would have resulted in radical reductions in rates throughout southeastern territory.

On May 29, 1894, the Commission went still further, and in the Cincinnati and Chicago Freight Bureau cases made radical reductions in the rates on about 2,000 articles from Cincinnati and Chicago to the principal commercial points in Tennessee, Mississippi, Alabama, and Georgia. It not only reduced the rates, but in some instances changed the relative situation as between Chicago and Cincinnati, and also, in numerous instances, changed the relative situation as between competing cities in the South, although none of these relative adjustments had been made a subject of complaint or investigation. The carriers ignored this order entirely.

In the face of such a record it seems idle to say that the Commission would not make rates generally under the power proposed. Several months ago the railroads in the South made substantial reductions in the rates from the Ohio River and from eastern cities to southeastern points on all classes of traffic. Nobody regarded this as anything but a general remaking of rates in that territory. Under the Townsend bill the Commission could have remade rates generally in precisely the same way, and it virtually attempted to do so in the Cincinnati and Chicago Freight Bureau cases.

Beyond any dispute the fact is that under a rate-making power, no matter how apparently restricted, it will rest simply and solely with the Commission itself as to the extent to which it will make rates. If the existing rates of the railroads accord with the theories of the members of the Commission, and these members think that the lines of policy pursued by the railroads are best calculated to promote the business interests of the country, then, of course, the Commissioners will not change these rates, but to whatever extent there is a difference of opinion on these matters of policy between the Commissioners and the various railroads, or any of them, the Commission can and will undertake to substitute its views for the views of the railroads. This is precisely what happened in the James & Mayer Buggy Company case and in the Chicago and Cincinnati Freight Bureau cases. It is what is always going to happen when an enormous and indefinite power is given to an administrative bureau. It is proverbial that such bureaus are disposed to exercise all the powers they possess.

Mr. Prouty's proposition simply amounts to this:

"If you give us the rate-making power I admit there will be no protection from what we do except in outrageous cases; but the Commission will always be careful to do right and will refrain except in rare cases from doing what you authorize us to do."

The proposition to give in any form any rate-making power to an administrative bureau means, for practical purposes, that Congress shall turn over in a lump to that bureau the power of Congress to regulate commerce among the States, and shall make of that bureau a little deputy congress to settle and change questions of public policy

and substitute its views of business management for the views of the railroads to whatever extent it chooses to do so.

The legislative power has been deemed so important as to necessitate its exercise by representatives of the people from every part of the country, divided into two deliberative houses, whose concurrence is necessary and whose action is subject to the veto power. Once give a commission the power to make railroad rates and there will then, for practical purposes, be vested in a single bureau, wholly non-representative in character, free from any veto power, the power of Congress over the commerce of the country that moves by the interstate railroads. All the Presidents may be so wise and discerning as to select only good men as members of this deputy congress, and all the members so selected may justify the wisdom of the President who appointed them, and the results may be, as Mr. Prouty predicts, free from disastrous consequences, but there is absolutely no guaranty that such will be the case, and there are no safeguards against the action of this tribunal except the power in the courts to prevent anything "manifestly wrong or outrageous."

Certainly conservative statesmanship should not attempt to confer such enormous power and such unrestrained discretion upon any administrative bureau except on account of an overwhelming public necessity, which clearly does not exist, and because such a step would be the only means of dealing with the situation, which certainly is not the fact.

STATEMENT OF HON. JUDSON C. CLEMENTS.

Hon. Judson C. Clements appeared before the committee on the twenty-seventh day, Friday, May 19, 1905. As he speaks of "gentlemen, some of whom have occupied your attention for three days at a time, mainly for the purpose of disparaging the Commission, not upon specific charges but upon inuendo and insinuation," and as I happened to be the only person who occupied the attention of the committee for three days at a time, I can not avoid the conclusion that Judge Clements intends the statement quoted to apply in part to me.

I submit that a dispassionate examination of my statement before the committee will disclose that any statements I made with respect to the Interstate Commerce Commission were statements of fact and that they were not, as Judge Clements says, "generalities and without specifications." I undertook to put before the committee as full a statement of the facts as I could. Any disparagement of the Commission which may have been implied from my remarks was simply that which follows necessarily from the statement of the facts which I presented.

I take it that the Commission can take no just ground of offense because in my effort to advise the committee as fully as I could with respect to the facts which it seemed important to put before the committee, it became necessary to state facts and at times point out the conclusions from those facts which tended to show that the Commission had not in all respects efficiently and promptly performed its duty of executing and enforcing the present law and that in some respects, notably in its response to the Senate relative to advance in freight rates, which was incorporated in Senate Document 257, the Commis-

sion had been strikingly inaccurate and exceedingly unfair to the railroads.

Judge Clements devotes considerable space to an effort to show that the Commission was as diligent as it ought to have been in the suppression of secret rebates. He recounts the controversies that led to the decisions by the Supreme Court in the Counselman, Brimson, and Brown cases. The last of these cases in point of time, Brown *v.* Walker (161 U. S., 591), was decided by the Supreme Court of the United States on March 23, 1896, and fully upheld the Commission's power to compel the production of evidence. The Commission's own reports disclose that the most flagrant rate cutting existed during the five or six years immediately succeeding the date of that decision.

Judge Clements endeavors to show that the Commission was diligent and persistent in seeking to prevent secret rebates; but the official statements of the Commission in its annual reports to Congress year by year have been put before the committee and show that the Commission steadily argued that it was practically no part of its duties to see to these matters, or, at any rate, a mere incident to more important duties, and that the Commission at one time even went so far as to proclaim officially that it had no function to perform with respect to this subject which could not equally be performed by private citizens.

COMMISSION'S RATE-MAKING EFFORTS CONSTANTLY CHALLENGED.

Judge Clements, to disprove the assertion that the Commission's effort to make rates was continuously challenged practically from the outset, quotes from the Commission's annual report for 1897, written, it seems, by Hon. William R. Morrison, then chairman of the Commission, in which it was stated that during a period of ten years no member of the Commission ever officially questioned the existence of the power to make rates. As the Commission was all that time assuming to make rates, it is not surprising that neither the Commission as a whole nor any of its members officially questioned its current official acts.

This annual report further states that the power of the Commission to make rates was never denied in any answers made before the Commission. This is not surprising. Complaints filed before the Commission attacked existing rates. The Commission undoubtedly had express power under the act to inquire whether those rates were lawful. Even if the Commission had been a court, and ordinary court procedure had been pursued, a demurrer to such complaint could not have been sustained, inasmuch as the inquiry into the lawfulness of the rates attacked was clearly within the jurisdiction of the Commission; nor would there have been any occasion for the respondents to put into their answers a conclusion of law to the effect that the Commission had no power to make rates, for, in addition to being a mere matter of law, unnecessary in an answer, this would not have been responsive, because it would still have left unchallenged the Commission's admitted jurisdiction to proceed with the complaint and decide as to whether the rates complained of were lawful or unlawful.

It can hardly be regarded as conclusive on the question whether the Commission's power to make rates was challenged to say that no members of the Commission officially questioned that power, and that none of the carriers made defendants in proceedings before the Commission denied the Commission's power in their respective answers.

Judge Clements was forced to admit that in January, 1892, in the Commission's opinion in the Florida Strawberry Case, it plainly appeared that carriers continued to deny the Commission's assumption of the power to prescribe maximum reasonable rates and that the defendants in that case had denied that power, and that the Commission therefore was under the necessity of restating the reasons upon which it attempted to exercise the power. In view of the fact that the question was thus frequently raised in argument before the Commission itself, it was hardly fair for the Commission to attempt to make the impression that its power in this respect was not questioned simply by saying that it had not been denied in the answers filed by the carriers.

Judge Clements's attention was also called to the Commission's annual report for 1895, which shows that carriers continued openly to deny the Commission's power to make rates. Judge Clements said that that was soon after the Social Circle Case was decided by the Supreme Court, but his attention was called to the fact that the Social Circle Case was not decided until March, 1896, several months after the Commission's report was written. Judge Clements then said that the Social Circle Case had perhaps been argued before the Commission's report in question was written; but the report of the Supreme Court shows that the case was argued in January, 1896, at least a month after the report in question was submitted to Congress by the Commission.

The fact is, however, that the Commission's power to make rates was denied in the circuit court as early as 1893, in the Social Circle Case.

Judge Clements also refers to my statement to the effect that in 1891 the Lehigh Valley Railroad set up in court the defense that the Commission had no power to make rates. He opposes this by Colonel Morrison's statement that in no answer made by any of the carriers was there any denial of this authority. Colonel Morrison's statement, however, only related to answers before the Commission. My statement related to an answer filed in court. Judge Clements goes further and says, "In the answer filed in the lower court there was no such question made." Opposed to this is the opinion of the circuit court for the eastern district of Pennsylvania, rendered May 11, 1896, in Interstate Commerce Commission *v.* Lehigh Valley Railroad Company, reported in 74 Fed. Rep., 784, where, on page 787, will be found the following language:

> We pass now to the consideration of a defense of a legal character raised by the twenty-fourth and twenty-fifth paragraphs of the defendant's answer, viz:
>
> "(24) This defendant is advised by counsel and therefore avers that the act entitled 'An act to regulate commerce' does not authorize the said Commission to fix the rates of transportation which shall be charged by railroad corporations.
>
> "(25) This defendant is advised by counsel and therefore avers that the said act does not authorize the said Commission to make the order which it made in this cause, set forth in Exhibit G, attached to the present petition."
>
> These paragraphs raise the question of the power of the Commission to fix maximum rates for transportation, as was here done.

Thus Judge Clements is incorrect when he says that the answer filed in the circuit court in the Lehigh Valley Case did not question the Commission's power to make rates.

Judge Clements's denial of my statement that in 1891 the Lehigh Valley Railroad set up this defense in court is the more surprising because the Commission's Fifth Annual Report for 1891, made on December 1, 1891, set forth in full the answer of the Lehigh Valley which had theretofore been filed in the circuit court and from which the above quotation is made by the court.

INCORRECT STATEMENT OF ISSUE INVOLVED.

Judge Clements states:

> What is asked for is that the shipper may have the right, somewhere along the line, to be heard in respect to this question (as to unjust and unreasonable rates), in which he has a recognized lawful right. (P. 48, twenty-seventh day.)
>
> I do not know any other department of life—any other line of business—in which the public, the lawmaking power, leaves the interests of one party to a discussion of this sort, solely to the protection of the self-interest of the other party. (P. 52, twenty-seventh day.)

Here, in effect, is the statement that all the careful provisions of the present interstate-commerce act for the determination of the lawfulness of any rate or rate adjustment and for preventing by injunction the continuance of any rate or rate adjustment found to be unlawful is worthless. This statement finds no support in the express language of the act or in the decisions of the court construing and applying that act or in the actual operation of the law in the hands of the Commission. It is this class of statements which has caused the present widespread misapprehension on this very important subject.

COLLEGE PROFESSORS.

Judge Clements is very severe in his criticism of Prof. Hugo R. Meyer, of the Chicago University. He denounces him as a college professor and a doctrinaire connected with an institution largely endowed by persons connected with the Standard Oil Company. Professor Meyer laid before this committee certain statements of fact as the results of government rate making in Germany, France, and Australia. He also laid before the committee certain statements of fact with respect to decisions of the Interstate Commerce Commission which tended to show that that Commission in its rate-making efforts in the past had been actuated by the same principles of rate making which had proved so unfortunate and embarrassing from a public standpoint in the countries referred to. Judge Clements does not pretend to deny that Professor Meyer's statements of fact were correct as to commercial conditions in the countries in question or as to the similar tendencies evinced by the Interstate Commerce Commission's rate-making efforts. So long as Judge Clements does not and can not deny the statements of fact, his unfriendly references to Professor Meyer are perhaps not relevant to the subject before the committee. Moreover, Judge Clements's unfavorable remarks about college professors in this connection are probably broad enough to embrace the college professor who from the outset has been the official statistician of the Commission and

under whose guidance it is to be presumed the statistics laid before the Senate and incorporated in Senate Document 257 were prepared.

CHICAGO AND CINCINNATI FREIGHT BUREAU CASES.

Judge Clements devotes considerable space to the discussion of the opinion of the Commission written by him in the so-called Chicago and Cincinnati Freight Bureau cases. He insists that the reduction of rates ordered in that case was based solely on the idea that rates from the Ohio River to points in southeastern territory were unreasonably high. No one can read the opinion of the Commission in that case (6 Interstate Commerce Reports, 197) without being convinced that the real motive of the Commission was to readjust the rates to the Southeast from Chicago and Cincinnati as compared with the rates from eastern cities. At the beginning of the Commission's conclusions it was stated that the principal charge in both cases was the allegation of undue prejudice of Chicago and Cincinnati as compared with eastern cities. Near the conclusion of the Commission's opinion it used this language with respect to the reduced rates fixed by it:

> These rates are a conservative reduction of the existing rates, and while it is believed they will go far to do away with the "undue prejudice" to which central territory is now subjected, they are probably not so low as they might be if fuller and more accurate data were accessible.

The Commission's decision was really based upon the theory, which will be apparent to anyone who reads the opinion, that the railroads had made an agreement whereby the transportation of manufactured goods from Chicago, Cincinnati, and other cities in the Central West should be discouraged to the end that the traffic in all manufactured goods to the Southeast might be preserved for the eastern cities and the roads serving those cities. I endeavored to point out in my statement before the committee that this theory was without foundation.

Judge Clements attempts to controvert my statements on this point, but in so doing he confuses the issues. He assumes that I denied there was any division of territory or agreement to regulate competition, whereas I expressly admitted there was a division of territory whereby manufactured goods *originating in the East* should be transported by the eastern lines and agricultural and animal products originating in the West should be transported by the western lines, and that competition was regulated or attempted to be regulated by the Southern Railway and Steamship Association. All the data which he puts into the record go simply to prove what I admitted, but wholly fail to prove what Judge Clements assumed in his opinion in the Cincinnati and Chicago Freight Bureau cases, to wit, that the railroads in the South agreed to establish rates which would discourage the transportation of manufactured articles from Chicago and Cincinnati. There never was any such agreement or any such intention. The railroads leading from the Ohio River to the Southeast have always been interested in developing manufacturing industries at points on the Ohio River and in transporting manufactured articles from the Ohio River and from points north of the Ohio River to the Southeast, and have made the rates from the Ohio

River to the Southeast just as favorable relative to the rates from eastern cities as could be established, taking into consideration the controlling water competition from the eastern cities. It is doubtless true that the traffic manager of the Louisville and Nashville Railroad claimed in 1890 that the adjustment was unfair to the Ohio River, but it is equally true that the traffic managers of the lines, and especially of the coastwise lines, serving the eastern cities have steadfastly refused to permit any change in that relative adjustment, and have always made whatever changes were necessary to meet any changes made by the lines from the Ohio River, so as to preserve the existing relation. It was likewise perfectly natural for traffic managers of railroads north of the Ohio River to attempt to shift any ground of complaint to the lines south of the Ohio River by attempting to show that the rates south of the Ohio River were relatively high. Such arguments as these ought to be regarded as far from conclusive by any tribunal assuming the tremendously important function of fixing rates for a vast number of railroads and a large section of the country.

But it is very interesting to pursue Judge Clements's theory that these rates were reduced simply because they were unreasonably high in themselves. A reading of the Commission's opinion will show how intangible and inconclusive were the arguments used to sustain this theory. There was a great maze of statistics about average cost per ton per mile and average rate per ton per mile in various parts of the country, which statistics, upon a careful analysis, would prove absolutely nothing with respect to the reasonableness of the particular rates under investigation.

The Commission gave virtually no consideration to the really significant facts that the railroads in the South were, many of them, bankrupt, and others on the verge of bankruptcy, and as a whole were far from realizing anything like a fair return upon the actual cost or reasonable value of the property. The Commission's order related primarily to and would have vitally affected all the railroads in Group V, consisting of the States of Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida. The order would have reduced the rates radically from all points on the Ohio and Mississippi rivers and on the Gulf of Mexico and possibly from Savannah, Brunswick, and Jacksonville to points in Tennessee, Alabama, Georgia, and Florida, and would have brought about a serious reduction in the revenues of the railroads in that group. For the year ending June 30, 1892, the net income per mile from operation was $1,517. Taxes per mile were $140, leaving the real net income from operation $1,377 per mile, which would have paid 6 per cent interest on only $22,950 per mile. For the year ending June 30, 1893, the net income per mile, after deducting taxes, was $1,224, which would have paid 6 per cent interest on $20,400 per mile. The Commission's decision was rendered May 29, 1894, or one month before the fiscal year ending June 30, 1894, closed. While the statistics for that year were, of course, not available, still the Commission was presumably acquainted with the general trend of railroad affairs. When these statistics became available it developed that the net income from operations per mile, after deducting taxes, for Group V was $1,200; which would have paid 6 per cent interest on $20,000 per mile.

Manifestly these sums were far less than the actual cost or the reasonable value of the southern railroads, including their equipment. When the Interstate Commerce Commission disregards such substantial and essential facts as these and makes a radical reduction in revenue simply on paper calculations of average rates per ton per mile, and average cost per mile, etc., in various parts of the country, a striking illustration is afforded of the dangers of conferring a wide discretionary power of rate reduction upon an administrative bureau. No responsible railroad man would ever make radical reductions in rates on such idle theories and calculations, but a commission is likely at any time to proceed on such theories with an unfortunate disregard of consequences.

In the course of its opinion the Commission said:

> Even pecuniary embarrassment of a road by reason of insufficient receipts from all sources is not a fact that will warrant making rates on a portion of its traffic unreasonably high for the accomplishment of a purpose such as is disclosed in these cases.

Thus the Commission was proposing to correct a theoretical and really imaginary wrong by the imposition of a very real and disastrous reduction of revenues, already far too small to meet perfectly legitimate requirements.

The Commission further said:

> It is believed, moreover, that the reduction in rates ordered in these cases will result in a corresponding increase in the tonnage of the roads in the traffic affected and that the revenue therefrom will be augmented rather than lessened. This, at any rate, will be the natural tendency of the change.

If the Government stood back of the Commission, prepared to make good the deficits which would result if such assumptions of the Commission should turn out to be incorrect, there would be less injustice in giving such a power to the Commission, and very probably the Commission would be much more cautious in making such assumptions if it felt that the Government instead of the railroads would have to stand the loss. But under any rate-making power proposed the only consolation the railroads would have if the traffic should not be increased (and I believe the uniform opinion of railroad people in that instance was that it would not be increased) would be that the failure to realize the increased traffic was unnatural, and "at any rate" the "natural tendency" ought to have been to increase their revenue.

In the Commission's statistics for the year ending June 30, 1894, occurred this language:

> It should be noted that not in the history of transportation in the United States has such a large percentage of railway mileage been under the control of receiverships as on June 30, 1894. * * * This, as a record of insolvency, is without a parallel in previous history of American railways, except it be in the period from 1838 to 1842.

These conditions must have been known to the Commission in a general way when it delivered its opinion in these cases May 29, 1894, yet it was content, on a series of theories and fictions, to order a radical reduction in the revenues of the railroads in one of the sections of the country where these financial difficulties were most serious and widespread.

In 1893 it had become necessary for the railroads to make large reductions in wages paid to their employees and to reduce the number

of their employees to the lowest possible force with which the railroads could be kept in operation. Every possible economy had been resorted to, and yet the Interstate Commerce Commission came along and ordered serious additional reductions in revenues.

I know of no case more strikingly illustrative of the danger to the owners of railroad properties and to the wage-earners dependent upon the railroads from giving the rate-making power to an administrative bureau.

This case likewise illustrates, as has heretofore been pointed out, how readily commercial conditions may be upset by the orders of such a tribunal. Judge Clements practically admitted in his statements before the committee that there had been no complaint or investigation as to the relative situation of Chicago and Cincinnati in their competition for the southern trade, and yet in some important particulars the Commission's order changed that relative situation. Likewise there had been no complaint or investigation as to the relative rates as between Chattanooga and Knoxville or Rome and Atlanta, or any of the other points in the South whose long standing relative adjustments were disturbed by the Commission's order.

This case further illustrates the sweeping generality of the action of an administrative bureau after it gets in full swing. Of course, at the outset the Interstate Commerce Commission would never have dreamed of making such a general, far-reaching, and radical order, yet six years of the habit of making rates for the railroads brought it to the point where it made the order without hesitation. It shows how unsafe it is to expect that an administrative bureau will not use the power conferred upon it. If Congress does not wish the power to regulate commerce to be used in this fashion it had better not transfer that power to any administrative tribunal.

THE SOCIAL CIRCLE CASE.

Judge Clements attempts to justify the action of the Interstate Commerce Commission in the Social Circle Case in reducing the rate from Cincinnati to Atlanta from $1.07 per 100 pounds on first class to $1 per 100 pounds, by saying that the single witness whose testimony was heard on the question of the reasonableness of the rate was vice-president of the line from Cincinnati to Chattanooga. The exact language of the Commission with respect to this matter is found on pages 750 and 751 of volume 4, Interstate Commerce Commission Reports, as follows:

> The only testimony offered or heard as to the reasonableness of the rate to Atlanta in question was that of the vice-president of the Cincinnati, New Orleans and Texas Pacific Company, whose deposition was taken at the instance of said company. The witness testified that he had been in the railroad service about twenty-six years and had much to do with rates during all that time, and that he considered $1.01 per hundred pounds in less than carloads a reasonable rate on first-class freight from Cincinnati, Ohio, to Atlanta, Ga. This statement or estimate of the rate from Cincinnati to Atlanta we believe is fully as high as it may reasonably be, if not higher than it should be; but without more thorough investigation than it is now practicable to make we do not feel justified in determining upon a more moderate rate than $1 per 100 pounds of first-class freight in less than carloads.

Judge Clements says that this testimony was regarded as an admission on the part of the railroads. The gentleman giving this testi-

mony had no authority to bind any line by his admission except the Cincinnati, New Orleans and Texas Pacific. He had no authority to bind any of the various lines leading from Chattanooga to Atlanta. He had no authority to bind the Louisville and Nashville or the Nashville, Chattanooga and St. Louis, which together constitute a route from Cincinnati to Atlanta, and were vitally interested in the rate. The Commission knew, or ought to have known, that a reduction from Cincinnati to Atlanta would involve the same reduction from Louisville, Evansville, Cairo, Memphis, New Orleans, and possibly every point on the Gulf. The Commission had no right to treat the statement of a single railroad man as an admission binding all the railroads interested in all the traffic affected. The Commission is given by the interstate-commerce act the widest powers of investigation, so there would seem to be no excuse for it to make reductions without "thorough investigation." The Commission would never in the first year or two of its existence have thought of making a sweeping reduction of this character without careful investigation. The fact that it was willing to do so in 1891 shows the striking increase in its readiness to interfere with long-established rates.

PETITIONS FOR AND AGAINST THE RATE-MAKING POWER.

Judge Clements indicates great impatience because "a lot of railway conductors and switchmen and railway employees of various sorts" have sent in petitions protesting against the rate-making power. He intimates that these men do not know enough about what they are talking about to afford the committee any information. Presumably "these men" know at least as much about this subject as the very large number of citizens to whom the Interstate Commerce Commission officially applied by its circular letter of February 3, 1900, with the request that they take action expressing their approbation and support to the Senators and Representatives from their respective States and to the Committees on Interstate and Foreign Commerce of the United States Senate and House of Representatives at Washington.

WHO DRAFTED THE RATE-MAKING BILLS?

Judge Clements seems quite indignant at the suggestion that anybody connected with the Interstate Commerce Commission drafted the Townsend bill. The presumption is that he thinks such suggestion imputes an improper action to the Commission. Yet I believe it has never been denied that Senate bill 1439, in the Fifty-sixth Congress, first session—which was the bill for which the Commission sought indorsements in its official circular letter of February 3, 1900—was drafted by one of the members of the Commission and by him submitted to a commercial organization at Chicago.

This bit of history is further interesting as showing that the Commission's protests that it is not seeking any power ought to be taken with some qualification. Senate bill 1439 cut out of the long and short haul section the words "under substantially similar circumstances and conditions," thus making it an ironclad prohibition of charging more for a short than for a long haul except when authorized by the Commission. This would have made the Com-

mission the rate makers for all the roads and imposed upon them a superhuman task, as declared by Judge Cooley in 1887. Thus this single provision of this bill would have given the Commission the most enormous power, and the bill was drafted by a member of the Commission and popular support for it was officially solicited by the Commission.

This bill further empowered the Commission to provide a uniform national freight classification, which would have imposed upon the Commission an enormous task and invested it with tremendous power. It further conferred upon the Commission power to make rates, leaving it, of course, to the Commission's discretion, as do all the rate-making bills, to determine how many rates it would make. If, therefore, the Commission deems it improper to draft bills giving it more power, and to solicit support for such measures, it has radically changed its mind in the last five years.

SENATE DOCUMENT 257.

Judge Clements, by way of comment upon the severe and detailed criticisms which have been placed before the committee relative to the Commission's response to the Senate concerning advances in rates, which was incorporated in Senate Document 257, says it is idle to deny that the great increase in rates on many hundred leading products played no part in the increase of revenue in 1903 over 1899. No one has denied that fact. Nobody has claimed that advances in rates did not play a part in the increased revenue. But Judge Clements wholly fails to refute or explain a single one of the numerous grave criticisms upon the work of the Commission in furnishing the Senate with such inaccurate, incomplete, one-sided, and misleading information.

Judge Clements says that where the roads are all congested and the centers are congested the freight would move then by the direct and short line, so as to relieve congestion the quickest. This supports the suggestions which have been made to the committee, by way of criticism on Senate Document 257, that on account of the congestion in 1903 traffic did move by direct lines, which probably in 1899 moved by circuitous routes; that therefore there was relatively much more duplication of the tons reported as carried in 1899 than in 1903, and hence that the basis of comparison used by the Commission was not only unreliable, but very unfair to the railroads. As has also been pointed out, the consolidation of lines in 1903 which were not consolidated in 1899 led to a relative diminution of the duplication in 1903 and still further increased the unreliability and unfairness of the basis of comparison which the Commission used. It has also been pointed out that the Commission itself has been fully aware of these conditions.

In the Statistics of Railways in the United States for 1898, the Commission, on page 25, pointed out that it was "impossible to determine the aggregate tonnage of the railways with accuracy," and that "the true units of transportation are the number of passenger miles and ton-miles accomplished, and not the number of passengers and tons carried. All important countries, England alone excepted, acknowledge this to be the only basis of safe comparison in railway statistics." Heretofore, in making comparisons of changes in revenue from year to year, the Commission has used the ton-mile basis.

It must be borne in mind that where the number of tons carried can be arrived at with precision and without duplication and where the average haul per ton is the same for two years it is entirely immaterial whether the basis of comparison is the number of tons carried or the number of ton-miles, because the only varying factor as between the number of tons carried and the number of ton-miles is the average haul per ton. Upon the best calculation which the Interstate Commerce Commission could make it found that the average haul of all the railways in the United States, regarded as a system was 242.45 miles in 1899 and 242.35 miles in 1903 (see p. 67, Statistics of Railways in the United States for 1903); in other words, from the best computations the Commission could make it was apparent to the Commission that the ton-miles would give substantially the same result as the tons carried if the tons carried were figured on a reliable basis. There was, therefore, no occasion for the Commission's resorting to the novel method of using the tons carried instead of the ton-miles, and absolutely no excuse for its using the total tons carried on all the railroads, which made no allowance whatever for duplication. On the ton-mile basis the increase of revenue in 1903 over 1899 was only $67,000,000. By using a grossly erroneous method the Commission produced a result of $155,000,000.

It is interesting to note that when the Commission came to figure the average haul per ton of all the railways regarded as a system, in 1899, it used approximately 510,000,000 as the total number of tons carried, and when it came to figure this same item for 1903 it used approximately 714,000,000 as the number of tons carried; 510,000,000 for 1899 and 714,000,000 for 1903 were the best approximations which the Commission could make to eliminate the inevitable duplications in the reports of tons carried. It showed an increase of 40 per cent in the tons carried in 1903 over 1899, but when the Commission was making a report to the Senate for the purpose of influencing public sentiment on the question of alleged advances in railroad rates it omitted to use the factors in arriving at the average rate per ton for all the railroads considered as a system which it had uniformly used in arriving at the average haul per ton of all the railroads considered as a system, and used the total of tons carried, as reported by all the railroads, with the result that it showed an increase of considerably less than 30 per cent in the number of tons carried. In other words, through ignorance or design the Commission used an unreliable basis, which undoubtedly exaggerated the tonnage carried in 1899 and correspondingly reduced the rate per ton, and unduly minimized the tonnage carried in 1903 and correspondingly increased the average rate per ton, with the unfair and misleading results already referred to.

Judge Clements proceeds to explain the difficulties of eliminating the duplication in tonnage, but he does not explain why the Commission went to the trouble of taking this basis, which it knew was unreliable, when it had the ton-mile basis, which it had always declared was far more reliable, and when from the best computations the Commission could make it knew that the average haul per ton was practically the same in 1903 and 1899, and therefore that the tons-carried basis, if accurate, was bound to produce practically the same figure as the ton-mile basis.

Judge Clements says that, figuring on the entire returns for 1903 as against 1899, the increase in revenue due to increase in the average rate per ton was about $104,000,000. But this is still upon the radically erroneous basis of the aggregate of the tons carried by each separate line, thus involving the duplications which the Commission itself attempts to discard when it figures the average haul per ton, but which it seems perfectly willing to take advantage of when it is figuring the average rate per ton.

Judge Clements makes no explanation of the Commission's failure to report the increased expenses for 1903, which it not only had in reports on file with it, but which it had worked up months before it had submitted the information as to advances in rates to the Senate; nor does he seek to explain the erroneous statement in that document that the low-grade tonnage had relatively increased, whereas the opposite was the case; nor does he seek to explain the palpable errors the Commission made in figuring the increase in revenue resulting from the advances in rates on lumber. In fact, Judge Clements does not answer or palliate a single one of the criticisms upon this document.

STATEMENT OF INTERSTATE COMMERCE COMMISSIONER MARTIN A. KNAPP.

Mr. Knapp appeared before the committee on the twenty-eighth day, Saturday, May 20, 1905.

PROHIBITING REDUCTIONS OF RATES EXCEPT UPON THIRTY OR SIXTY DAYS' NOTICE.

Mr. Knapp says a very prominent traffic official thinks rates should not be reduced on less than ninety days' notice; that the late Judge Green, at one time general counsel of the Vanderbilt System, suggested that rates ought not to be reduced except upon sixty days' notice; that the class rates in official classification territory have not been changed for many years; that the rates on cotton have not been changed for many years; that therefore and in order to avoid the possibility of discrimination by "midnight tariffs" Congress should prohibit rates from being reduced on less than thirty or sixty days' notice, except upon special permission from the Commission in emergencies. I suggest that Mr. Knapp's premises are not sufficiently broad to justify his conclusion, and that the evil which he desires to cure is not sufficiently serious to justify such a far-reaching remedy. It can not be assumed that traffic officers generally will indorse the statement of the distinguished traffic officer to whom Mr. Knapp refers, or the general counsel of railroads generally will indorse the view of the general counsel of the Vanderbilt System. It can not be assumed that because class rates may not vary frequently and that because rates on cotton may be stable therefore there is not a very vital necessity to the commerce of the country that many rates on specific commodities may be reduced on very short notice. While unlawful discriminations by midnight tariffs have of course occurred, it has not been established that it is an evil of very large proportions relatively considered. Indeed where an *unjust* discrimination occurs through the operation of a midnight

tariff a remedy could probably be found under the present law, and if not, the law could be changed so as to make an adequate remedy. If a carrier reduces its rate and moves a large quantity of traffic for a single shipper and a few days later advances its rate to the former figure, and a competitor of that shipper has to pay the higher rate, there ought to be no difficulty in making that a prima facie case of unjust discrimination and in putting the burden upon the carrier to show that the change of rates was made in good faith and as the result of legitimate business conditions. Certainly as the rates are published there is no possible difficulty about getting the evidence.

The business of transportation is so intensely practical and is so interwoven with changing commercial conditions which do not admit of precise classification and definition in advance of their occurrence that it is exceedingly unwise to hamper business with inelastic provisions except when they are absolutely required. To authorize the Commission to suspend the law in emergencies would not give the desired elasticity, because the Commission, if it took the time to act intelligently upon applications, could not act with sufficient promptness to give the desired relief.

After all is said there can be no doubt that one of the most salutary regulating agencies is publicity, and if a carrier commits unjust discriminations only through changing its published rates it can certainly, by sufficient attention on the part of the administrative bureau charged with the enforcement of the law, be visited with such penalties as to prevent a recurrence of such practice. On the other hand, the direct result of prohibiting reductions in rates except upon thirty days' notice would be to encourage secret departures from the tariff rates in order to meet perfectly legitimate and urgent commercial conditions which otherwise could not be met. One powerful influence in securing publicity is such elasticity in the law as makes it practicable to adjust and change published rates so as to meet commercial conditions.

A striking illustration of this is the operation of the long and short haul law. The Commission has been disposed to criticise the railroads in the South for charging less for the long than the short haul and to praise railroads in trunk-line territory for so adjusting the rates as to make the rates for the long haul not less than the short haul. One result of this divergent practice has been that there has been remarkably little rate cutting in the South; the railroads have met competitive conditions at the competitive points by published rates which were always subject to correction if they were not really justified by competitive conditions beyond the control of the particular railroad which might be complained of. (The Interstate Commerce Commission to the contrary notwithstanding, it is perfectly clear, under the decisions of the Supreme Court, that the present long and short haul law is susceptible of enforcement so as to accomplish fully every purpose for which it could have been enacted.) On the other hand, it is no doubt true that the railroads in trunk-line territory found themselves from time to time face to face with overwhelming commercial conditions which required the reduction of rates on commodities like grain at competitive points, but which did not apply at all to noncompetitive points, and undoubtedly a powerful influence encouraging a departure from pub-

lished rates at competitive points was the great embarrassment which would have resulted in changing all the intermediate rates on the same commodity which were not affected by the same conditions.

To prohibit reductions in rates except upon thirty or sixty days' notice would place an additional difficulty in the way of conducting certain important branches of the railroad business publicly and in accordance with law. It is not contended that such a prohibition would justify departures from the tariff rates, but the contention simply is that human nature can not be legislated out of existence either in shippers or in railroad officials and that the more nearly it is made practicable to conduct business according to commercial conditions under published rates the less likelihood there will be of conducting it according to commercial conditions on secret rates.

PREVENTION OF REBATES.

Mr. Knapp says that at an early date after the interstate-commerce act went into effect Judge Grosscup held that "You could not convict a carrier for paying a rebate unless you proved that for like contemporaneous service it charged somebody else more."

Mr. Knapp further says that for eight years the Commission was asking Congress to change the law so as to make any departure in the tariff rate an offense.

I am at a loss to understand how so careful a man as Mr. Knapp could have fallen into such an inadvertence. Doubtless the case to which he refers was the case of the United States against Hanley (71 Fed. Rep., 672), in which the district court for the northern district of Illinois, presided over by Judge Grosscup, considered motions to quash the indictments. He held that the counts of the indictments under consideration which attempted to allege an unjust discrimination in violation of section 2 of the interstate-commerce act were insufficient because they failed to allege facts showing that anybody had been discriminated against. But Judge Grosscup went further with respect to other counts of the indictments and held directly the contrary of what Mr. Knapp says Judge Grosscup held, as is shown by the following language on pages 674 and 675 of the court's opinion:

> But the interstate-commerce act was not intended solely to prevent unjust discrimination. It was meant, as well, to prevent extortionate rates, and, looking thereto, provision was made that the carrier should schedule his rates with the Interstate Commerce Commission, and upon their approval should publish the same, whereby such schedule should be a fixed and uniform rule of charge during the period of its existence. To make this effective, and so effective that the shipper might not only safely rely upon it as the maximum of his own expenditure for transportation, but also as the minimum of the expenses of his rival for the same service, it was made unlawful for a carrier to collect or receive from any person a greater or less compensation for the transportation of property than is specified in such published schedule. Another provision of the act makes any officer of a corporation carrier willfully doing the things prohibited equally guilty. I am of the opinion that the first and third counts of the indictment against Reinhart and Hanley state a good case under these provisions. These counts of the indictment, as already recited, aver that the railroad company in question was a common carrier between Kansas City and Chicago; that the rate in force between these points for live stock during the period from April to November, 1892, was 23½ cents per 100; that the defendants were officers of the carrier and as such officers demanded, *collected*, and received from the shipper on account of shipments of live stock

made during that period, namely, more than 100 carloads of such live stock, the schedule rate then in force; and that, in October following, they unlawfully and willfully gave and paid, and caused to be given and paid, and willingly suffered to be given and paid to the shipper a rebate of $5 upon each carload so transported. The facts thus set forth exhibit a transaction or series of transactions which resulted in the shipper procuring the transportation of his live stock between two States at a rate less than the schedule rate then in force—a result brought about by the willful acts or sufferance of the officers of the corporation carrier.

READJUSTMENT OF RATES BETWEEN LOCALITIES.

Mr. Knapp refers to the enormous power now in the hands of the railroads over the comparative prosperity of different localities. He does not seem to realize that there are both practical and legal limitations upon this power which would not exist if the power were transferred to the Interstate Commerce Commission. Some of the practical limitations are that railroad officers have to and do deal with the facts and do not make rates upon theories, as commissions are likely to do and as they have very frequently done; the railroads are charged with direct responsibility for the welfare of places on their lines, and at least when it comes to a contest between places on their lines and places on the lines of other railroads are thoroughly identified in interest with the places on their lines; the railroad officers are far better advised as to the facts, both those having direct and indirect bearing upon the situation, than any commission could possibly be (for example, railroad officers would never overturn long-standing and satisfactory rate adjustments between competing localities, as the Commission attempted to do in the Maximum Rate Case); the result is that railroad officers are far more likely to adjust rates in strict accord with laws of trade than any commission is likely to do, and it is far better in the long run to have commercial affairs conducted according to the laws of trade than according to the views of an administrative bureau. The striking legal limitation upon the act of the railroads is that if they depart from the bona fide observance of trade conditions and substitute arbitrary or oppressive action the courts can, under the present law, afford a swift and sure correction, and in doing this the courts are not embarrassed by any sanctity attaching to the action of the railroad officers; whereas in the case of a commission it is, as has been stated by Mr. Prouty, practically as free from control as is Congress itself, and at any rate its improper action will not be corrected by the courts except where it is manifestly wrong or outrageous. Moreover, despite all that has been said about railroad consolidations, the fact remains that there are a large number of entirely independent railroad systems in this country, each working for the development of its own part of the country. To give the Commission the power which is sought to make minimum or absolute rates and thereby change the relative commercial importance of places whenever the Commission chose to do so would create a centralized power over the commerce of this country which does not exist anywhere in any form at this time.

Mr. Knapp also assumes that the present tendency of railroad-rate adjustments is to concentrate industry rather than to diffuse it, and that the action of an Interstate Commerce Commission would have the contrary effect. In view of the constantly increasing develop-

ment of strictly local points on the lines of all the railroads in this country and of the perfectly obvious motive on the part of the railroads to develop their local points, the assumption that the present rate adjustment tends to centralize rather than to diffuse industry and commerce must be incorrect. On the other hand, the entire history of the Interstate Commerce Commission shows that its tendency has been in the direction of centralizing industry and commerce. In the celebrated Milk Case, if its interference with the rates had had any effect at all it would have been to encourage the centralization of the New York dairy business at points in the immediate vicinity of New York City. Governor Cummins is of the opinion that the Commission's action in the Iowa packing-house cases resulted in destroying the packing-house industry in Iowa and concentrating it at Chicago. The history of rate adjustments made by foreign governments upon exactly the same principles to which the Interstate Commerce Commission has always shown an adherence shows that such principles do inevitably lead to centralization rather than to diffusion of industry and commerce.

THE POWER OF CONGRESS TO CORRECT UNLAWFUL TARIFF RATES.

Mr. Knapp announces the proposition that a tariff rate is a law—"a rule of action of general application"—and that "if that law is wrong the only thing to do is to change the law," and that "in the very nature of the case the proposal to use the methods of a court to deal with a purely legislative question is incongruous and unsuitable."

The only tariff rates in this country which are laws are the tariffs or rates established by State railroad commissions. Yet it is a well-recognized jurisdiction of the court to correct these laws whenever they violate the rights of the railroad company. So far, therefore, from being incongruous and unsuitable, it is a perfectly natural and usual method of changing tariff rates which are in fact laws for a court to require them to be changed when they violate rights protected by the Constitution. But rates established by the railroad companies are not laws; it has always been an unquestioned jurisdiction in the courts to consider whether these rates were reasonable and just.

Mr. Knapp makes the statement that every authority denies that a court will maintain an action the object and purpose of which is to reduce a freight rate. I am not aware of any authority which denies this proposition. As I pointed out in my comments on Mr. Prouty's statement before the committee, there are various authorities which support the proposition that under the interstate-commerce act the courts can entertain an action for the direct purpose of enjoining the continuance of a rate unreasonably high, and hence necessarily for the purpose of reducing that rate; and that in the Cattle Raisers' Association Case this point was directly decided by the circuit court (94 Fed Rep., 272; 98 Fed. Rep., 173), and was necessarily assumed and acted upon by the Supreme Court (186 U. S., 320).

Mr. Knapp insists that to attempt to correct tariff rates for the future through the courts would be "to enter upon some years of litigation to find out just how much a court can do, how much it will do, and how it will do it."

This statement is hardly warranted in view of the fact that the courts have already so clearly sustained and acted upon their power to employ the preventive or injunctional method of correcting rates for the future, which Mr. Knapp frankly admits is a very substantial remedy whenever it is applied. Indeed, since the judicial method of procedure now has the sanction of eighteen years' use under the interstate-commerce act, and since the whole question of the extent to which Congress can delegate its power to regulate commerce to an administrative bureau and the extent to which that action can be reviewed by the courts is involved in very great obscurity and doubt, it seems that the argument of uncertainty and delay applies to Mr. Knapp's plan of giving the Commission the rate-making power rather than the plan of continuing to correct unlawful rates through judicial procedure.

Mr. Knapp's contention that to give the Commission the power to make rates would not be "any radical departure from the theories and plans and purposes of the present law" is certainly incorrect. The theory of the present law is that the courts, with the aid of the Commission, will prevent violations of the law. Mr. Knapp's theory is that an administrative bureau shall be authorized to make self-executing standards which the railroads must observe in order to comply with the law, and that the function of the courts shall be merely to say whether this administrative bureau has transgressed the powers conferred upon it. A more complete and radical departure and revolution in the method of dealing with the subject can not be imagined.

Mr. Knapp questions the sincerity of those who oppose his plan of turning this matter over to an administrative bureau and who say instead that ample correction can be and ought to be exercised through the courts. He seems to assume that the only question is as to the capacity of the judges on the one hand and the members of the Commission on the other, and to think that he has destroyed the argument to which he is opposed when he satisfies the committee that the members of the Commission have, as a rule, been well qualified to act as Federal judges. But in this Mr. Knapp misses the point entirely. Let us grant that all the members of the Commission have been eminently qualified to serve as members of the Supreme Court of the United States; it does not follow that it would be fair and just to submit to these gentlemen, as Interstate Commerce Commissioners, the practically final determination of vital controversies in which the railroads are interested. It is not alone the capacity of a man, but rather his environment and the character of his powers, which determine his real qualification to sit in practically final judgment upon important controversies. The district attorney may be fully qualified to act as judge of the district court, but it does not follow that he, while acting as district attorney, is the proper person to pass upon the case. The real difficulties which Mr. Knapp does not meet are that an administrative bureau never does act with that same strict regard to the law and the evidence which characterizes courts, but, on the contrary, is disposed to act, to a very large extent, upon its own theories of what ought to be; and, further, that an administrative bureau is, from the nature of its employment, very far from an impartial tribunal. Mr. Prouty, in his statement to the

committee, referred incidentally (see p. 63, twenty-sixth day) to a hearing before the Commisison in a live-stock case, in which Judge Baxter represented the railroad companies, which were the defendants. In a perfectly natural way Mr. Prouty referred to Judge Baxter as being "on the other side." If Mr. Prouty had been sitting as Federal judge, he would not have referred to the attorney for the defendant as "being on the other side;" but, being a member of an administrative bureau charged with the supervision of railroad affairs, it was a perfectly natural thing for Mr. Prouty to say. So far as I am aware, Judge Clements is the only gentleman who has contended that the combination of the functions of detective, prosecutor, judge, legislature, and executive does not tend to disqualify a man to act in a perfectly impartial and judicial way in dealing with these important rights of the railroads.

It is well known that any administrative bureau is always disposed to seek additional power. State commissions with power to make rates are seeking powers to prescribe and require additional railroad facilities. If the Interstate Commerce Commission gets the power to make rates it may after a while want other powers as incident thereto. It may look to certain portions of the public for support in obtaining these powers. It is entirely possible that some condition may arise under which there will be a sort of community of interest, in the direction of securing more powers for the Commission, between some future commission and the complainants who appear before it against the railroads. This is a condition which can not be guarded against in the case of an administrative tribunal. Such things can not work for fair and impartial treatment for the railroads.

If the members of the Interstate Commerce Commission had been judges of a court, accustomed to judicial habits and protected by the safeguards from partisanship with which tradition and the law surround judges, it can hardly be believed that they would have prepared and promulgated the unfair and misleading figures contained in their report to the Senate which is incorporated in Senate Document 257.

THE TOWNSEND BILL.

One very striking thing about the hearing before this committee is the fact that not a single member of the Interstate Commerce Commission nor a single advocate of the rate-making power for the Commission has indorsed the Townsend bill. Practically every gentleman who has appeared on that side of the question has suggested grave defects in that bill.

THE "LEGISLATIVE" ARGUMENT.

It is notable that practically all the advocates of the rate-making power for the Commission plant themselves almost exclusively on the position that there is absolutely no way to regulate rates for the future except through an administrative bureau, because regulating rates for the future is a legislative function with which the courts can have nothing to do. The courts have frequently held that the power delegated by State legislatures to railroad commissions to make

rates was of a legislative character. In the Maximum Rate Case the court said, with reference to the general fixing of rates by the Interstate Commerce Commission there under consideration, that fixing rates for the future was a legislative function. But the courts have not held that they are powerless to enforce for the future the present law that rates shall be just and reasonable, and shall not unjustly discriminate or create undue preference. On the contrary, the courts have repeatedly made decrees which did correct tariff rates for the future, and I believe it has been made reasonably clear to the committee that if it were necessary the power of the courts in this respect could be still further enlarged. It should be borne in mind that in the Maximum Rate Case the court was dealing with a suit brought by the Interstate Commerce Commission, which, of course, could only be brought in pursuance of statutory authority, and was dealing further with the question what powers Congress had conferred upon the Commisssion. The extent of the inherent power of the courts with respect to requiring the future correction of unlawful rates or the extent to which power in that regard could be conferred upon the courts was not involved or considered. It is certainly a most dangerous fallacy to assume that because general rate making by commissions is a legislative function therefore the courts are utterly helpless to correct unlawful rates for the future, and consequently Congress is forced to choose between leaving rates to the unbridled views of the railroads, on the one hand, and giving an administrative bureau the power to interfere and change these rates whenever it chooses to do so, on the other hand, subject only to a very qualified and doubtful judicial review. No such alternative is presented.

THE LONG AND SHORT HAUL SECTION.

Much has been said about the long and short haul section having been destroyed by the courts, yet from a careful reading of the decisions of the Supreme Court of the United States on the long and short haul section—notably the Alabama Midland Case (168 U. S., 144), the Behlmer Case (175 U. S., 648), the Chattanooga Case (181 U. S., 1), and the La Grange Case (190 U. S., 273) it is perfectly apparent that the statute has all the operation that can be given to it unless an iron-clad long and short haul rule is to be established, which nobody advocates, or unless a purely arbitrary discretion is given to the Interstate Commerce Commission. Under the long and short haul section and the other sections of the interstate-commerce act as construed by the courts every railroad is bound to accord to every place on its line rates that are not unreasonably high, and the efficient enforcement of the present law will correct every rate that is unreasonably high. In addition to according every place on its line rates which are not unreasonably high a railroad can never give a longer distance point a less rate than a shorter distance point except when the less rate is necessitated by actual competition for which that railroad is not responsible; in any such case, as has been pointed out by the Supreme Court, the discrimination in favor of the competing point is not the act of the railroad company but the result of other causes, and the railroad company does not of itself give that point an advantage, but simply recognizes an advantage which the point enjoys anyhow. Not only must the rate to the shorter distance point

be not unreasonably high and the rate to the longer distance point be less only in case of controlling competition, but the rate to the longer distance point must not be lower than is actually necessitated by such competition and must not be so low as to be actually unremunerative to the railroad company.

The suggestion that where the competition is due to a carrier subject to the interstate-commerce act the less charge for the longer haul should not be allowed except upon permission of the Commission is wholly illogical. The competition is just as effective when due to the act of a carrier subject to the law as when due to any other cause, and there is absolutely no basis for a distinction. If the carrier subject to the law which creates the competition is itself guilty of arbitrary action in doing so and creates competition at a given point at the expense of other points on its line, then that illegality can be fully corrected under the present law; but where the rates of a given carrier subject to the law are themselves not unlawful and yet are on a lower scale than the rates of some other carrier subject to the law, the very same reasons justify the latter carrier in meeting the competition of the former as justify the latter carrier in meeting water competition or competition of any other character.

FISH BROS. MANUFACTURING COMPANY,
Clinton, Iowa, May 8, 1905.

Hon. STEPHEN B. ELKINS,
Chairman Senate Committee on Interstate Commerce,
Washington, D. C.

DEAR SIR: We wish to call your attention to a matter of apparent discrimination in freight rates against this point as compared with Moline and Davenport, points with which we come into direct competition in the manufacture and sale of our goods.

The rate on lumber from St. Louis to Moline and Davenport, in carload lots, is 7 cents per hundredweight, and to Clinton it is 10 cents per hundredweight. This same differential applies on shipments from all mill points in the South.

The rate on finished wagons from Clinton to Texas common points is 79 cents per hundredweight, while from Moline and Davenport it is 75 cents per hundredweight. On the other hand, the rate from Clinton and from Moline and Davenport to Minneapolis is 17 cents per hundredweight in carload lots on finished wagons.

Our contention is not that these rates are too high in themselves, but that we should be placed on the same basis as Moline and Davenport on shipments to and from the South, or that we should have a better rate, instead of the same rate, on shipments north. In other words, their geographical position is an aid to them on southern business and is no handicap on northern business.

We believe that this is a matter which plainly demands adjustment, and should be pleased to hear from you in the premises.

Yours, truly,

FISH BROS. MFG. CO.,
By P. T. FISH,
Secretary and Manager.

THE COLUMBUS BOARD OF TRADE,
Columbus, Ga., May 25, 1905.

Hon. S. B. ELKINS,
Chairman Senate Committee, Washington, D. C.

DEAR SIR: Inclosed herewith I hand you copy of resolution passed this day by the Columbus Board of Trade. We trust it will receive your favorable consideration.

Respectfully, JOHN C. COART, *Secretary.*

Whereas the Senate committee now in sesion at Washington was organized to take testimony and hear protests for or against the passage of the Esch-Townsend bill, having for its main purpose the creation of a new tribunal or the enlargement of the scope of the Interstate Commerce Commission, so that the power may be conferred to fix maximum freight rates: Therefore, the Columbus Board of Trade hereby resolves that it doubts the expediency and necessity of the enaction into a law of the Esch-Townsend bill under any conditions; that the effects of such legislation at the present time would be disastrous to the great undeveloped sections of the United States, and especially so to the South, which is just beginning to feel the effect of industrial development, and we feel that the entrance of the railroad is so closely identified with the progress of this section, and that the expansion of our growth will depend upon proper adjustments of incoming and outgoing freight rates, and as said rates might not be flexible with our local conditions under the Esch-Townsend bill; that we therefore deplore any change in the law on the subject, deeming that the power which Congress has already assumed through the Interstate Commerce Commission and by which excessive freight rates can be prevented and secret railroad "rebates" have been and can be further prohibited: Therefore, be it

Further resolved, That the Columbus Board of Trade, responsive to the needs and requirements of the vast manufacturing and industrial interests located here, and to the large warehouse and commercial interests centering here, looks with distrust and disfavor upon the proposals of the Esch-Townsend bill, and respectfully submits that it be not enacted into a law.

That these protests and resolutions be forwarded by the Columbus Board of Trade to the honorable committee of the Senate of the United States, to be embodied as a part of the record of their proceedings.

THE NATIONAL ASSOCIATION OF MANUFACTURERS OF THE UNITED STATES OF AMERICA,
New York, May 24, 1905.

Hon. STEPHEN B. ELKINS,
Washington, D. C.

DEAR SIR: I have the honor to inclose to you herewith copy of resolution passed at the Tenth Annual Convention of the National Association of Manufacturers, held at Atlanta, Ga., on May 16, 17,

and 18 of this year, and to ask that it be filed, as customarily with such papers, with the Senate Committee on Interstate Commerce.

With great respect, yours, most truly,

MARSHALL CUSHING, *Secretary.*

Resolved, That we favor the active enforcement by the executive department of the General Government of all existing laws to prevent the giving or acceptance of rebates or special favors (through whatever device) to or by favored shippers, and we call upon the Interstate Commerce Commission to apply all the remedies at their disposal as provided by the original interstate-commerce act and the Elkins Act amending the same.

Resolved, That if the existing laws for the detection and punishment of the giving or acceptance of such rebates are insufficient or defective in any respect, we favor the enactment of such further legislation as may be necessary adequately to deal with the evil and to secure this complete prevention.

Resolved, That in order to carry into effect the provisions of the foregoing resolutions Congress should be asked for a provision to be made for the necessary examination of the books of the railroad corporations somewhat after the manner of the national banks examinations, for the purpose of detecting and eliminating special favors and discriminations against the small or less favored shippers, and a provision for adequate punishment for improper disclosure of confidential information so gained.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
BROOKLYN TERMINALS DIVISION, No. 639,
Brooklyn, N. Y., May 7, 1905.

COMMITTEE ON INTERSTATE COMMERCE,
United States Senate, Washington, D. C.

GENTLEMEN: At a regular meeting of Division No. 639 of the Brotherhood of Locomotive Engineers, held in Brooklyn, N. Y., on above date, the following resolution was adopted:

"Whereas we, the members of Division No. 639, Brotherhood of Locomotive Engineers, as railroad employees, are interested in any legislation affecting the prosperity of the railroads; and

"Whereas we believe the Esch-Townsend bill, now in the hands of the United States Senate, if made a law would seriously affect and interfere with the earning power and prosperity of the railroads: Therefore, be it

"*Resolved*, That while we are strongly opposed to having any favoritism shown in freight rates or any rebates granted to anyone, we are equally opposed to the Esch-Townsend bill, which would give to the Interstate Commerce Commission power to arbitrarily fix rates of transportation upon the railroads of the country, thus endangering capital invested in railroad properties and liable to affect the wages paid employees and impair the large holdings of railroad securities held in savings banks, life-insurance companies, and other institutions in which the general public is interested."

FRED. H. TUCKER, *C. E.*

"Whereas the Congress of the United States will have before it at the coming session the question of additional legislation affecting the American railways, employing 1,300,000 people: Therefore be it, by the Order of Railway Conductors in biennial convention assembled,

"*Resolved*, That we hereby indorse the attitude of President Roosevelt in condemning secret rebates and other illegalities, and commend the attitude of the heads of the American railways, who, with practical unanimity, have joined with the President on this question; and be it further

"*Resolved*, That we respectfully represent to Congress the inadvisability of legislation vesting in the hands of a commission power over railway rates, now lower by far in the United States than in any other country; that this low cost of transportation is the result of the efficiency of American railway management and operation, which have built up the country through constant improvement in service and development of territory, while at the same time recognition has been given to the value of intelligence among employees, in contrast to foreign methods, where high freight rates and lowest wages for employees obtain; that the freight rates of this country average only 2 per cent of the cost of articles to the consumer, thus making the freight rate an insignificant factor in the selling price, numerous standard articles being sold at the same price in all parts of the country; and be it further

"*Resolved*, That regulation of rates by a Government body would, in the opinion of this convention, result in litigation and confusion, and inevitably tend to an enforced reduction of rates, irrespective of the question of the ability of the railroads to stand the reduction, especially in view of the increased cost of their supplies and materials; and be it further

"*Resolved*, That the proposed legislation is not in harmony with our idea of the spirit of American jurisprudence, inasmuch as it contemplates that a single body shall have the right to investigate, indict, try, and condemn, and then enforce its decisions, at the cost of carriers, pending appeal, which is manifestly inequitable; and that if there is to be legislation on this subject it should be such as would secure and insure justice and equity and preserve equal rights for all parties concerned; but in view of the facts, legislation affecting rates is not called for at this time, and would be inadvisable; and be it further

"*Resolved*, That this convention finds itself in accord with President Roosevelt, who, in a message to Congress, has said: 'It must not be forgotten that our railways are the arteries through which the commercial lifeblood of this nation flows. Nothing could be more foolish than the enactment of legislation which would interfere with the development and operation of these commercial agencies.'"

The above is a correct copy of resolutions adopted by the thirtieth session of the Grand Division of the Order of Railway Conductors of America, in convention assembled at Portland, Oreg., on May 12, 1905, and of which the Grand Division ordered that copy be sent

to each member of the United States Senate and of the House of Representatives, as well as to the Interstate Commerce Commission.

E. E. CLARK,
Grand Chief Conductor, Order of Railway Conductors.

Attest:
H. MAXWELL,
Grand Secretary and Treasurer,
Order of Railway Conductors.

ONEONTA, N. Y., *February 24, 1905.*

The following is a copy of the resolutions adopted by Chapman Division, No. 45, Order of Railway Conductors:

"Whereas we, the members of Chapman Division, No. 45, are interested in the welfare of the railway employers in any legislation affecting the interest of railways; and

"Whereas we believe the Esch-Townsend bill, now in the hands of the United States Senate, will, if it becomes a law, seriously affect and interfere with such property and earning power of the railroad: Be it, therefore,

"*Resolved*, That this organization is opposed to the bill becoming a law; and further be it

"*Resolved*, That a copy of this resolution be sent to the State senator for this district and to each of the United States Senators from this State.

"In witness cause the seal of this division to be affixed."

[SEAL.]

F. W. MILLER,
Chief Conductor.
R. V. HUMPHREY,
Secretary.

MECHANICSVILLE, N. Y., *February 20, 1905.*

At a regular meeting of the Thomas Dickson Division, No. 171, Order of Railway Conductors, held Sunday, February 19, 1905, the following resolutions were unanimously adopted:

"*Resolved*, That the policy of the Order of Railway Conductors is one of fairness to our employers and the public alike;

"*Resolved*, That this spirit prompts us to condemn the Townsend-Esch bill, now before the United States Legislature, as unwise and unfair—

"Unwise, that its provisions must and will not only bring great loss to our railroads, but of necessity bring about disturbances in business directly dependent upon railway service. Hence hardship and unsettled conditions develop which it is impossible for such a bureau to cure or even regulate;

"Unfair, that its provisions bring the hardship and accompanying loss upon corporations whose policy has been above reproach, and against whom no charge of excessive rates or rate abuses has ever been brought;

"*Resolved*, That we urge our United States and State Senators to use their influence against the measure."

[SEAL.]

T. J. HOLLORAN,
Chief Conductor.
H. I. GARDNER,
Secretary.

Additional list of shippers, individuals, firms, corporations, and organizations protesting against extending the powers of the Interstate Commerce Commission to regulate railway rates.

The list of which this is a supplement will be found at page 485 et seq., Vol. I, of these hearings.

Warner, Moore & Co., Richmond, Va.
Chas. S. Denman, secretary, the Des Moines Water Works Company, Des Moines, Iowa.
The Tonopah Lumber Company, Tonopah, Nev.
Fred Fleishman, druggist, Tucson, Ariz.
Brannen & Hanny, men's outfitters, Tucson, Ariz.
Mose Drachman, Tucson, Ariz.
O. C. Parker, funeral director and embalmer, Tucson, Ariz.
C. S. Brantingham, secretary, Rockford Manufacturers and Shippers' Association, Rockford, Ill.
Rufus Maxwell, Parsons, W. Va.
E. T. Robie, president Auburn Lumber Company, Auburn, Cal.
Elias D. Gardner, Red Bluff Chamber of Commerce, Red Bluff, Cal.
Arthur Asher, vice-president Cohn-Asher Hat Company, wholesale dealers in hats and caps, Los Angeles, Cal.
W. C. Downing, secretary California Warehouse Company, Los Angeles, Cal.
Nye & Nissen, dealers in butter, eggs, cheese, and dressed poultry, San Francisco, Cal.
F. A. Kauffman, manager Sierra Lumber Company, Woodland, Cal.
J. Craig, manager Yolo County Consolidated Water Company, Woodland, Cal.
Clinton E. Worden, president New Liverpool Salt Company, Los Angeles, Cal.
H. S. Williamson, manager Williamson & Crosby, wholesale and retail lumber dealers, moldings, millwork, etc., Lincoln, Cal.
A. W. Jones, Los Alamitos Sugar Company, Los Alamitos, Cal.
W. J. Wilson & Son, fancy fruits, Newcastle, Cal.
A. A. Van Voorhies & Co., manufacturers of saddlery hardware, horse clothing, carriage trimmings, leather and shoe findings, Sacramento, Cal.
A. Getty & Co., general merchandise, Tustin, Cal.
Dales Brothers, hay, grain, wood, and coal, Santa Monica, Cal.
The McPherson Packing Company, oranges and lemons, etc., McPherson, Cal.
Turner & Edinger, Puritas and Shasta waters, Santa Monica, Cal.
Ray L. Miner, grocer, Pomona, Cal.
R. B. Wheelan, cigars and tobaccos, Pomona, Cal.
J. F. Condon, manager Verdi Lumber Company, Verdi, Cal.
C. W. Sheats, real estate, Santa Ana, Cal.
H. S. Tubbs & Co., druggists, Santa Ana, Cal.
Santa Ana Produce Company, Santa Ana, Cal.
J. Hoff, Santa Ana, Cal.
Herman Harris, dry goods, Santa Ana, Cal.
S. L. Powers & Co., dry goods, etc., Longbeach, Cal.
F. W. Morris, publisher the Wilmington Journal, Wilmington, Cal.
E. G. Freeman, Santa Monica Transfer Company, Santa Monica, Cal.
John Bauer, secretary Union Brewing Company, Anaheim, Cal.
Charles Federman, dry goods, etc., Anaheim, Cal.
Asher & Falkenstein, dry goods, etc., Anaheim, Cal.
Stern Brothers, general merchandise, Anaheim, Cal.
Breen Brothers, groceries, dry goods, harness, etc., Wilmington, Cal.
Stern & Goodman, dry goods, etc., Fullerton, Cal.
John Weber, proprietor Pomona Ice and Soda Works, Pomona, Cal.
A. Zellerbach & Sons, paper, twines, and cordage, San Francisco, Cal.
O. P. Downing & Co., drugs and proprietary specialties, San Francisco, Cal.
A. H. Laflin, Milwaukee Furniture Company, San Francisco, Cal.
E. A. Taylor, F. A. E. Division No. 161, Brotherhood of Locomotive Engineers, of San Francisco, Cal.
E. C. Cron, secretary pro tempore Golden Gate Lodge, No. 91, Brotherhood of Locomotive Firemen, of San Francisco, Cal.
H. Sherwood, managing director Sperry Flour Company, San Francisco, Cal.
Walter R. Kneiss, secretary the Transportation Club, of San Francisco, Cal.
Pioneer Automobile Company, San Francisco, Cal.
Division No. 217, Brotherhood of Locomotive Engineers, of Whitehall, N. Y.
Division No. 87, Brotherhood of Locomotive Engineers, of Troy, N. Y.

Division No. 418, Brotherhood of Locomotive Engineers, of Mechanicsville, N. Y.
Division No. 58, Brotherhood of Locomotive Engineers, of Oneonta, N. Y.
Division No. 172, Brotherhood of Locomotive Engineers, of Schenectady, N. Y.
Division No. 14, Brotherhood of Locomotive Engineers, of Utica, N. Y.
Division No. 533, Brotherhood of Locomotive Engineers, of Buffalo, N. Y.
Division No. 421, Brotherhood of Locomotive Engineers, of Buffalo, N. Y.
Division No. 311, Brotherhood of Locomotive Engineers, of Binghamton, N. Y.
Division No. 227, Brotherhood of Locomotive Engineers, of Watertown, N. Y.
Division No. 29, Brotherhood of Locomotive Engineers, of Rensselaer, N. Y.
Division No. 367, Brotherhood of Locomotive Engineers, of Syracuse, N. Y.
Division No. 169, Brotherhood of Locomotive Engineers, of Syracuse, N. Y.
Division No. 589, Brotherhood of Locomotive Engineers, of New York, N. Y.
Division No. 377, Brotherhood of Locomotive Engineers, of Ogdensburg, N. Y.
Division No. 544, Brotherhood of Locomotive Engineers, of Buffalo, N. Y.
Division No. 152, Brotherhood of Locomotive Engineers, of Oswego, N. Y.
Division No. 641, Brotherhood of Locomotive Engineers, of Hornellsville, N. Y.
Division No. 209, Brotherhood of Locomotive Firemen, of Whitehall, N. Y.
Division No. 315, Brotherhood of Locomotive Firemen, of Troy, N. Y.
Brotherhood of Locomotive Firemen, of Albany, N. Y.
Brotherhood of Locomotive Firemen, of Oneonta, N. Y.
Division No. 56, Order of Railway Conductors, of Albany, N. Y.
Division No. 154, Order of Railway Conductors, of Binghamton, N. Y.
Board of Trade of Keeseville, N. Y.
Board of Trade of Saratoga, N. Y.
Board of Trade of Oneonta, N. Y.
Chamber of Commerce of Albany, N. Y.
Board of Trade of Fort Edward, N. Y.
Board of Trade of Cooperstown, N. Y.
Board of Trade of Plattsburg, N. Y.
Board of Trade of Whitehall, N. Y.
Chamber of Commerce of Troy, N. Y.
Electric City Division, No. 382, Brotherhood of Locomotive Engineers, of Buffalo, N. Y.
L. W. Emerson, Emerson & Co., Warrensburg, N. Y.
Wm. B. Millard, president Millard Lumber Company, Rouses Point, N. Y.
Thos. H. Campion, secretary and treasurer Security Steel and Iron Company, Troy.
John J. Cunningham, president Progressive Pulp and Paper Company, Plattsburg.
E. C. Baker, president Baker Bros. Lumber Company, Plattsburg, N. Y.
Hon. Edgar T. Brackett, attorney, Saratoga, N. Y.
W. H. Chandler Company, Scranton, Pa.
Harvey & Eddy, Troy, N. Y.
Edward B. Ashton, Saratoga, N. Y.
J. E. Molloy & Co., Troy, N. Y.
John A. Becker, Albany, N. Y.
Geo. R. Finch, president Finch, Pruyn & Co., incorporated, Glens Falls, N. Y.
A. J. Pitkin, president American Locomotive Company, New York.
Wm. A. Avery, treasurer the Scranton Whetstone and Abrasive Wheel Company, Scranton, Pa.
W. J. Gallagher, treasurer Granville Electric and Gas Company, Sandyhill.
Edwin E. Darling & Co., Troy, N. Y.
G. W. Hornbaker, general manager Scranton Cold Storage and Warehouse Company, Scranton, Pa.
Hugh J. Chisholm, president International Paper Company, New York.
Henry L. Sherman, secretary the Sherman Lime Company, Glens Falls, N. Y.
Estate of W. H. Hollister, Troy, N. Y.
The Quackenbush Company, Scranton, Pa.
Willis Hanson, president the Union National Bank, Schenectady, N. Y.
Ralph E. Weeks, secretary Foote & Shear Company, Scranton, Pa.
George C. Kellogg, Plattsburg, N. Y.
Ford & Rowe, Oneonta, N. Y.
Rice, Levy & Co., Scranton, Pa.
L. G. Fisher, president the Union Bag and Paper Company, New York.
F. B. Foote, Foote & Becker, Scranton, Pa.
Morris Bros., Oneonta, N. Y.
R. N. La Bar, secretary Federal Granite Brick Company, Scranton, Pa.
Walter L. Matthews, treasurer Chas. P. Matthews & Sons, Scranton, Pa.
G. M. Pierce, manager Peck Lumber Manufacturing Company, Scranton, Pa.
Luther Keller, Scranton, Pa.
P. W. Butler, manager Gaylord & Eltapence Company, Scranton, Pa.
Jas. J. Child, president Jas. J. Child Coal Company, Troy, N. Y.

J. M. Kemmerer, Bittenbender & Co., Scranton, Pa.
E. L. Merriman, manager the Paragon Plaster and Supply Company, Scranton, Pa.
F. A. Raiser, manager the Scranton Bedding Company, Scranton, Pa.
Frank Bayer, treasurer Wilbur, Campbell, Stephens Company, Troy, N. Y.
Geo. Bayle, president Glens Falls Portland Cement Company, Glens Falls, N. Y.
Brotherhood of Locomotive Engineers, Division 18, Rochester, resolution.
Brotherhood of Locomotive Engineers, Division 41, Elmira, resolution.
Brotherhood of Locomotive Engineers, Division 534, Elmira, resolution.

ARIZONA.

Consolidated National Bank, Tucson.
The Arizona National Bank, Tucson.
L. M. Jacobs, Tucson.
L. Rosenstern, Tucson.
Fred Fleishman, Tucson.
Mose Drachman, Tucson.
J. B. Sparks, Tucson.
O. C. Parker, Tucson.
Braunen & Hanny, Tucson.
Roy & Titcomb, Tucson.

ALABAMA.

Lookout Mountain Iron Company, Birmingham.
Alabama Consolidated Coal and Iron Company, Birmingham.
Ivy Coal and Iron Company, Birmingham.
Pratt Coal Company, Birmingham.
Lacey Buek Iron Company, Birmingham.
Tennessee Coal, Iron and Railroad Company, Birmingham.
Republic Iron and Steel Company, Birmingham.

CALIFORNIA.

Asher & Falkenstein, Anaheim.
Stern Brothers, Anaheim.
Brewing Company (Inc.), Anaheim.
Chas. Federman, Anaheim.
W. B. Harris, Fresno.
E. G. Chaddock, Fresno.
Stern & Goodman, Fullerton.
Sherriffs Brothers Company, Healdsburg.
Williamson & Crosby, Lincoln.
H. Poland, Lompoc.
A. Lehmann, Lompoc.
S. L. Powers & Co., Long Beach.
Los Alamitos Sugar Company, Los Alamitos.
M. A. Newmark & Co., Los Angeles.
Loeb, Fleischman & Co., Los Angeles.
Haas, Baruch & Co., Los Angeles.
Los Angeles Cooperage Company, Los Angeles.
Parmelee-Dohrmann Company, Los Angeles.
Llewellyn Iron Works, Los Angeles.
R. C. P. Smith, Los Angeles.
Roberts & Gross, Los Angeles.
Globe Grain and Milling Company, Los Angeles.
J. E. Cook Mercantile Company, Los Angeles.
John L. Chase, Los Angeles.
C. D. Willard, Los Angeles.
Herring-Hart-Marvin Safe Company, Los Angeles.
Hampton Hardware Company, Marysville.
F. W. Backus, Mayfield.
L. A. Schaufele, Monterey.
F. Zimmerman, Monterey.
David Roderick, Monterey.
M. W. McMenamin, Monterey.
Pacific Realty and Investment Company, Monterey.
The Del Monte Toggery, Monterey.
Hull Brothers, Monterey.
Frank Hellman, Monterey.
The McPherson Packing Company, McPherson.
Geo. D. Kellogg, Newcastle.
J. M. Gardner, Oakland.
T. W. Corder, Oakland.
Mesmer Smith Company, Oakland.
Oakland Pottery and Terra Cotta Works, Oakland.
Louis Reese, Oakland.
Howe & Weinchester, Oakland.
Keel & Evans Company, Oakland.
Pacific Manifold Book Company, Oakland.
A. Bloomenthal Clothing Company, Oakland.
The Bese Manufacturing Company, Oakland.
F. M. Umphreds, Oakland.
David Bercovitch, Oakland.
California Cotton Mills, Oakland.
Morris Schneider, Oakland.
E. J. Soake, Oakland.
Theo. Gier, Oakland.
The Windale Co., Oakland.
Oakland Warehouse Co., Oakland.
Howell-Dohrmann Co., Oakland.
Robert Howden, Oakland.
Hunt, Hatch & Co., Oakland.
Orr & Breedlove, Oakland.
Smith Bros., Oakland.
First National Bank, Oroville.
John Spence, Oxnard.
Charles K. Tuttle, Pacific Grove.
A. Mader, Pasa Robles.
L. Baeuckle, Pasa Robles.
C. S. Smith, Pasa Robles.
Frank M. Balfour, Pomona.
Miner & Heath, Pomona.
Wheelan & Alford, Pomona.
John Weber, Pomona.

Holt & Gregg Co., Red Bluff
Alta Lime and Brick Co., Redding.
A. D. Walsh, Redwood City.
J. D. Knox, Riverside.
B. H. Shepley, Riverside.
H. W. Hawse, Riverside.
W. E. Neblett, Riverside..
G. T. Rice, Riverside.
William Bartee, Riverside.
William H. Burke, Riverside.
F. M. Heath, Riverside.
C. C. Waite, Riverside.
J. C. Hardman Drug Co., Riverside.
L. A. Boyer, Riverside.
F. H. Speich & Co., Riverside.
G. R. Hand & Co., Riverside.
J. L. Moss, Riverside.
Patten & Lett Co., Riverside.
Joseph Andrews, Riverside.
C. R. Stebbins, Riverside.
Riverside Foundry and Machine Works, Riverside.
Fireman's Fund Insurance Co., Riverside.
J. J. Andrews, Riverside.
D. Johnson, Riverside.
David F. Godfry, Riverside.
Shaw-Batcher Co., Sacramento.
California Winery, Sacramento.
William Beckman, Sacramento.
The Pioneer Fruit Co., Sacramento.
A. A. Van Vorhees & Co., Sacramento.
Kirk, Geary & Co., Sacramento.
Wahrlich, Cornett Co., Salinas.
Porter & Irvine, Salinas.
J. H. Menke, Salinas.
John F. Hay, Salinas.
D. Lynn, Salinas.
John Cantroh, Salinas.
Frolli & Salmina, Salinas.
G. Lapierre, Salinas.
W. A. Anderson, Salinas.
E. H. Berolitz, San Bernardino.
E. J. De Pue, San Francisco.
Wendling Redwood Co., San Francisco.
Wendling Hoch Adding Machine Co., San Francisco.
Weed Lumber Co., San Francisco.
Wendling Lumber Co., San Francisco.
Wendling Redwood Shingle Co., San Francisco.
C. F. Renyon, San Francisco.
Arthur S. Holman, San Francisco.
Jules Leoy & Bro., San Francisco.
Globe Grain Milling Co., San Francisco.
H. R. Williar, San Francisco.
A. Crocker & Bro., San Francisco.
Greenbaum, Weil & Michels, San Francisco.
George Renner, San Francisco.
Justinian Cairo Co., San Francisco.
Williams Marvin Co., San Francisco.
California Pine Box and Lumber Co., San Francisco.
Chas. D. Ford Co., San Francisco.
Central Lumber Co., San Francisco.
Petalina Lumber Co., San Francisco.
Pacific Redwood Shingle Co., San Francisco.
McCloud River Lumber Co., San Francisco.
Sonoma Valley Lumber Co., San Francisco.
Huron Lumber Co., San Francisco.
Sierra Nevada Lumber Co., San Francisco.
Truckee Lumber Co., San Francisco.
Albion Lumber Co., San Francisco.
North Coast Commercial Co., San Francisco.
Half Moon Bay Lumber Co., San Francisco.
Geo. H. Fuller Desk Co., San Francisco.
John Brenner Co., San Francisco.
Haas Brothers, San Francisco.
San Francisco Pioneer Varnish Works, San Francisco.
John Martin & Co., San Francisco.
Morgan Brothers, San Francisco.
Union Brokerage Co., San Francisco.
Schloss Crockery Co., San Francisco.
Schultz Hawson Co., San Francisco.
Harris Brothers & Co., San Francisco.
Franklin Railway Supply Co., San Francisco.
Occidental Supply Co., San Francisco.
McMullin & Eyre, San Francisco.
Wm. B. Collier, San Francisco.
N. S. Bell, San Francisco.
Acme White Lead and Color Works, San Francisco.
S. C. Irving, San Francisco.
Freeman, I., San Francisco.
Gladstone Brothers, San Francisco.
Alexander Yost Co., San Francisco.
A. Zellerbach & Sons, San Francisco.
John A. Roebling's Sons & Co., San Francisco.
Pioneer Automobile Co., San Francisco.
Maurice Rosenthal, San Francisco.
Union Fish Co., San Francisco.
Milwaukee Furniture Co., San Francisco.
Nye & Nissen, San Francisco.
Sperry Flour Co., San Francisco.
O. P. Downing & Co., San Francisco.
Novelty Machine Works, San Francisco.
Mutual Electric Light Co., San Francisco.
West, Elliott & Gordon (Incorporated), San Francisco.
C. A. Malum & Co., San Francisco.
Brigham & Co., San Francisco.
Ralston Iron Works, San Francisco.
The J. K. Armsby Co., San Francisco.
Enterprise Brewing Co., San Francisco.
Sam Bibo & Co., San Francisco.
Louis Kline & Co., San Francisco.

California Barrel Co., San Francisco.
Henry Rorvell Lime and Cement Co., San Francisco.
Getz Brothers & Co., San Francisco.
Wheaton, Pond & Harrold, San Francisco.
H. A. Williams Co. (Incorporated), San Francisco.
Carisa Chemical Co., San Francisco.
Welland Brothers, San Francisco.
F. E. Booth, San Francisco.
Meigs & Co., San Francisco.
Sanitary Devices Manufacturing Co., San Francisco.
W. D. McArthur, San Francisco.
Wichman, Lutgin & Co., San Francisco.
F. P. Cutting Co., San Francisco.
Geo. Herrman Co., San Francisco.
W. M. Duval & Co., San Francisco.
Herman Heynemann, San Francisco.
Donande & Co., San Francisco.
Pacific Coast Rubber Co., San Francisco.
Schussler Brothers, San Francisco.
A. Meyer, San Francisco.
Inlo Development Co., San Francisco.
C. Schmitz Co., San Francisco.
Herman Cohen, San Francisco.
Landercock Transfer Co., San Luis Obispo.
J. W. Crocker & Co., San Luis Obispo.
J. B. Blake, San Luis Obispo.
Sinsheimer Brothers, San Luis Obispo.
Lippman Brothers, San Pedro.
San Pedro Hardware Co., San Pedro.
Nelson Ward, San Pedro.
McDermott & Quinn, San Pedro.
Seaside Market, San Pedro.
San Pedro Wholesale Co., San Pedro.
Santa Ana Produce Co., Santa Ana.
H. S. Tubbs & Co., Santa Ana.
J. Hoff, Santa Ana.
Fred M. Stern, San Jose.
Geo. Jessen Co., San Jose.
H. L. Miller, San Jose.
The Commercial Savings Bank, San Jose.
George Frank & Co., San Jose.
The Bean Sons' Co., San Jose.
F. Kuchenbeiser & Son (Incorporated), San Jose.
Keiser & Koch, San Jose.
Mayer Brothers, San Jose.
Reiser's Furniture House, San Jose.
R. Kocker & Son, San Jose.
Munson's Prescription Pharmacy, San Jose.
Security State Bank, San Jose.
Myers, McMahon & Co., San Jose.
Walter J. O'Brien, San Jose.
Barchers Brothers, San Jose.
Elwood Cooper, Santa Barbara.
National Fire Insurance Company, Santa Cruz.
Hall-Jones Company, Santa Cruz.
Davis Warehouse Company, Santa Cruz.
Dales Brothers, Santa Monica.
Turner & Edinger, Santa Monica.
Santa Monica Transfer Company, Santa Monica.
Santa Paula Commercial Company, Santa Paula.
Hickinbotham Brothers, Stockton.
C. Shields Iron Works, Stockton.
Williams & Moore, Stockton.
Hobbs Parsons Company, Stockton.
Austin Brothers, Stockton.
Campbell Brothers, Stockton.
A. Getty & Co., Austin.
The Bank of Ventura, Ventura.
S. W. Barton & Co., Whittier.
F. R. Weeks, Whittier.
L. A. Bryan, Whittier.
The Wilmington Journal, Wilmington.
Breen Brothers, Wilmington.
Henry Craner, Winters.
Yolo County Savings Bank, Woodland.
Bank of Woodland, Woodland.
Globe Grain and Milling Company (no town given).
G. B. Ochietree (no town given).
Red Bluff Chamber of Commerce, Red Bluff.
Board of Trade of Willows, Willows.

COLORADO.

I. N. Bunting, Grand Junction.
J. R. Wentworth, Grand Junction.
J. J. Lemisden, Grand Junction.
The Grand Junction Fruit Growers' Association; J. F. Smith, president; J. F. Moore, manager, Grand Junction.
Mesa County State Bank, Grand Junction.
A. J. Sampliner, Grand Junction.
C. F. Varrell, Grand Junction.
J. E. Lulmaine, Grand Junction.
J. Purcell, Grand Junction.
J. Brown, Grand Junction.
J. H. Cagrane, Grand Junction.
F. Shee, Grand Junction.
Wadsworth & Sons, Grand Junction.
C. C. Lamb, Grand Junction.
J. W. Fleming, Grand Junction.
W. H. Bannister, Grand Junction.
F. P. Smith, Grand Junction.
Henon & Cassells, Grand Junction.
The Progress Grocery and Bakery, Grand Junction.
Fred Lantey Saddlery Company, Grand Junction,
M. Hertz, Grand Junction.
T. D. Ream & Co., Grand Junction.
Mesa Flour Mills Company, Grand Junction.
The Mesa Lumber Company, Grand Junction.

Grand Junction E. & G. Company, Grand Junction.
Charles G. Newton, Grand Junction.
George E. Haskell, Grand Junction.
The Grand Junction Lumber Company, Grand Junction.
The Independent Lumber Company, Grand Junction.
The W. F. White Mercantile Company, Grand Junction.
The Grand Junction Feed and Implement Company, Grand Junction.
M. W. McConnell, Grand Junction.
W. D. Davies, Grand Junction.
T. H. Carr, Grand Junction.
E. M. Hardy, Grand Junction.
Frank H. Haskell, Grand Junction.
H. B. Ennor, Grand Junction.
The Globe Express Company, Grand Junction.
The H. G. Bedwell Transfer Company, Grand Junction.
R. P. Davie, Grand Junction.
Edmund Simmons, Grand Junction.

GEORGIA.

Georgia Industrial Association, Columbus.
D. W. Hill & Co., Macon.
R. J. Tayler, Macon.
Dunlap Hdior Company, Macon.
W. G. Solomon & McRae, Macon.
S. R. Jaques & Tinsley & Co., Macon.
W. R. Cox, vice-president Central Georgia Bank, Macon.
McGraw Manufacturing Company, Macon.
J. W. Cabaniss, president Exchange National Bank, Macon.
Macon Grocery Company, Macon.
J. F. Mines & Co., Savannah.

ILLINOIS.

H. T. Masters & Co., Carlinville.
Lincoln Coal Co., Lincoln.
First National Bank, Lincoln.
Iron City Pasteurized Milk Co., Rock Island.
L. Allomey, Rock Island.
Bus Express Lines, at large.
J. R. Hollowcush, at large.
Bus Express and Transfer Lines, at large.
John W. Parker, at large.

IDAHO.

James E. Babb, Lewiston.

IOWA.

C. F. Cobb, Akron.
Hopkins & Co., Akron.
I. Kendson, Akron.
The Fields & Slaughter Co., Akron.
Akron Grain Co., Akron.
O. D. Burdall, Algona.
S. L. Kern, Charles City.
C. C. Fiel, Charles City.
J. A. Case, Charles City.
George P. Smith Co., Charles City.
Charter Oak State Bank, Charter Oak.
Wm. Mair & Co., Charter Oak.
T. W. Thomsen & Co., Charter Oak.
Grimm & Hollister, Cleat Lake.
S. J. Clanson, Clear Lake.
Clinton Bridge and Iron Works, Clinton.
Clinton Gas Light and Coke Company, Clinton.
W. Graf & Co., Cresco.
F. H. O'Halloran, Cylinder.
Builders' Lime and Cement Company, Davenport.
E. J. Dougherty, Davenport.
Waldo Becker, Davenport.
Davenport Gas and Electric Company, Davenport.
S. A. Feinger, Davenport.
W. W. Lunger, Davenport.
J. W. Battendorf, Davenport.
H. Van Maur, Davenport.
Ewert & Richter, Davenport.
Schicks Express and Transfer Company, Davenport.
Washbun Halligan Coffee Company, Davenport.
Wm. Sielis, Davenport.
C. G. Hepwell, Davenport.
Theo. Hertzog, Davenport.
Walter Chambers, Davenport.
J. A. De Armand, M. D., Davenport.
H. C. Lusk, Davenport.
Al. Boehnlin, Davenport.
L. Echart, Davenport.
J. R. Metting, Davenport.
J. W. Crowley, Davenport.
E. W. Hoyt, Decorah.
Henry Rewes, Decorah.
C. J. Weiser, Decorah.
Ben Bear, Decorah.
Bently & Olmstead Company, Des Moines.
Des Moines Drug Company, Des Moines.
Schmitt & Henry Manufacturing Company, Des Moines.
Warfield-Pratt-Howell Company, Des Moines.
Langan Brothers, Des Moines.
W. R. Rice, Dickens.
Somers Brothers, Dickens.
G. W. Anderson, Fostoria.
Chas. Christian & Son, Grafton.
O. H. Christians, Grafton.
W. F. Lutz, Grafton.
Schoeneman Brothers, Hawarden.
Cook Brothers, Hobart.
C. B. Lampkin, Inwood.
W. A. Perry, Mapleton.
J. S. Alexander, Marion.

C. H. McNider, Mason City.
D. W. Vroom, Mason City.
J. E. E. Markley, Mason City.
A. H. Merrill, Mason City.
John Stonberry, Mason City.
C. A. Parkin, Mason City.
F. M. Norris, Mason City.
A. H. Gale, Mason City.
George P. Smith, Mason City.
American Brick and Tile Company, Mason City.
The Darles Lumber Company, Monticello.
Hunting Eli Company, McGregor.
Gilchrist & Co., McGregor.
C. E. Durston, Nora Springs.
I. D. Foster, Ottumwa.
J. B. Mowrey, Ottumwa.
A. L. Bartholemew, Preston.
Blunt Gocum Company, Ruthven.
Dr. G. Baldwin, Ruthven.
August Clesle, Ruthven.
J. H. Dailey, Sanborn.
E. C. Taugney, Sanborn.
Geo. Hakeman & Son, Sanborn.
Hornick, Hess & Moore, Sioux City.
Terwilliger and Dwight Company, Sioux City.
Brown Coal Company, Sioux City.
C. T. Hopper, Sioux City.
Tolerton & Stetson Company, Sioux City.
Warfield-Pratt-Howell Company, Sioux City.
Moulton-Wallace Company, Spencer.
M. M. Hines, Spencer.
Smith Brothers, Spirit Lake.
Thomas Gray, Wesley.
M. P. McDonald, Whittemore.
C. E. Boyle, Whittemore.

MINNESOTA.

W. J. Krebsbach, Adams.
J. T. Fairbanks, Austin.
T. I. Crane, Austin.
John W. Scott, Austin.
Seren, Anderson & Co., Austin.
Crookston Lumber Company, Crookston.
T. H. Loyhed & Son, Faribault.
H. Bradley & Co., Leroy.
Porter & Goring, Leroy.
M. F. Dunn, Leroy.
E. S. Stanley, Lyle.
F. M. Beach, Lyle.
W. E. Le Baron, Lyle.
C. A. Smith Lumber Company, Minneapolis.
Shevlin-Carpenter Company, Minneapolis.
Brooks-Scanlon Lumber Company, Minneapolis.
Scanlon-Gipson Lumber Company, Minneapolis
Brooks Brothers, Minneapolis.
Washburn-Crosby Company, Minneapolis.
Janney, Semple, Hill & Co., Minneapolis.
Pillsbury-Washburn Flour Mills Company, Minneapolis.
The Great Western Elevator Company, Minneapolis.
The Menz Lumber Company, Minneapolis.
Merrill Lumber Company, Minneapolis.
Bradley-Walkins Company, Minneapolis.
Itasca Lumber Company, Minneapolis.
Coffin Box and Lumber Company, Minneapolis.
City Sash and Door Company, Minneapolis.
The D. H. Gilmore Company, Minneapolis.
F. L. Heffelfinger, Minneapolis.
M. D. Flower, Minneapolis.
Hardwood Manufacturing Company. Minneapolis.
Central Supply Company, Minneapolis.
E. S. Woodworth & Co., Minneapolis.
A. M. Fish, Minneapolis.
Reliance Elevator Company, Minneapolis.
W. S. Ankenny & Co., Minneapolis.
C. G. Ireys, Minneapolis.
Stewart Elevator Company, Minneapolis.
H. Wehmann & Co., Minneapolis.
Wright, Barrett & Stillwell, St. Paul.
Northwestern Fuel Company, St. Paul.
C. W. Gordon, St. Paul.
Foot, Schulze & Co., St. Paul.
Foley Brothers & Kelly, St. Paul.
Latsch & Son, Winona.
Bay State Milling Company, Winona.

MISSOURI.

Smith McCord-Townsend Dry Goods Co., Kansas City.
Ridener-Baker Grocery Company, Kansas City.
Ryley-Wilson Grocer Company, Kansas City.
American Transfer Company, Kansas City.
The Kansas City Casket and Furniture Company, Kansas City.
Samuel Diggs, Kansas City.
Clagett Storage and Transfer Company, Kansas City.
L. D. Hamacher, Kansas City.
Hovey & Brown, Kansas City.
William D. Kemper, Kansas City.
James A. Bolen, Kansas City.
Houston, Fible & Co., Kansas City.
David Rankin, jr., St. Louis.
D. J. Dean, Kansas City.

MONTANA.

First National Bank, Missoula.
F. L. Greenough, Missoula.

NEBRASKA.

W. H. Harrison, Grand Island.
Omaha Bridge and Terminal Railway, Omaha.
Paxton Vierling Iron Works, Omaha.
Baum Brothers, Omaha.
Omaha Elevator Company, Omaha.

NEVADA.

Tonopah Lumber Company, Tonopah.
Verdi Lumber Company, Verdi.

NEW HAMPSHIRE.

E. R. Brown, Dover.

NEW YORK.

Kellogg & Miller, New York City.
The Continental Insurance Company, New York City.

NORTH CAROLINA.

J. Ellwood Cox, High Point.
Proximity Manufacturing Company, Greensboro.

NORTH DAKOTA.

C. R. Meridith, Casselton.
W. A. McCulley, Oakes.
Amasa P. Peake, Valley City.

SOUTH CAROLINA.

Hon. W. C. Butler, North Augusta.

SOUTH DAKOTA.

P. F. Wickham, Alexandria.
John Burbeck, Avon.
N. D. Giedd, Avon.
G. H. Shannard, Bridgewater.
D. M. Hofer, Bridgewater.
W. C. Gemmill, Canton.
Mutual Lumber Company, Canton.
Canton Grain Company, Canton.
Farmers' Lumber Company, Canton.
Paul Gross, Dolton.
J. E. Carlson, Emery.
Olsen White & Co., Hudson.
M. J. Gotshelf, Lennox.
Mackay Brothers, Madison.
Wm. M. Smith, Mitchell.
M. F. Patton, Mitchell.
H. L. Bras, Mitchell.
J. T. Morrow, Mitchell.
Fullerton Lumber Company, Mitchell.
E. R. Storer, Mitchell.
L. J. Welch, Mitchell.
L. K. Lord, Parker.
C. W. Thompson, Parker.
Vreeland Brothers, Sioux Falls.
Wider Bros. & Co., Sioux Falls.
F. C. Whitehouse & Co., Sioux Falls.
T. J. Fosdick & Son, Sioux Falls.
John Fitz Gibbon, Sioux Falls.
Roy Williams, Sioux Falls.
M. King, Utica.
Excelsior Mill Company, Yankton.
David M. Finnegan, Yankton.
Smith & Harris, Yankton.
O. H. Curney, Yankton.
Brisbines Dry Goods House, Yankton.

TEXAS.

T. W. House, Houston.
H. B. Rice, Houston.
T. C. Dunn, Houston.
W. B. Chew, Houston.
Henry S. Fox, Houston.
Charles Dillingham, Houston.
J. S. Rice, Houston.
William D. Cleveland, Houston.

WASHINGTON.

Prosser Falls Land and Power Co., Prosser.

WYOMING.

J. C. Davis.

WISCONSIN.

Wm. Krause, jr., Albany.
Stillman, Wright & Co., Berlin.
M. Safford, Berlin.
T. H. Rumsey, First National Bank, Berlin.
H. C. Putnam, Brodhead.
Dodge & Stephenson, Brodhead.
B. N. Clawson, Brodhead.
Chippewa Lumber and Boom Co., Chippewa.
North Western Lumber Co., Eau Claire.
Drummond Packing Co., Eau Claire.
E. L. Shepherd, Edgerton.
The Anderson Vehicle Co., Fond du Lac.
Huber & Fuhrman Drug Mills, Fond du Lac.
Winnebago Furniture Co., Fond du Lac.
Kellogg Brothers Lumber Co., Grand Rapids.
The Badger Box and Lumber Co., Grand Rapids.
F. Mackinnon Manufacturing Co., Grand Rapids.
The Grand Rapids Lumber Co., Grand Rapids.
Centralia Pulp and Water Power Co., Grand Rapids.

Grand Rapids Pulp and Paper Co., Grand Rapids.
Fred A. Hollman, Green Bay.
W. H. Kerr, Hartford.
Inglebut Peterson, Hartford.
John H. Krause, Hartland.
John Glauc, Hartland.
F. Gerbinski, Hartland.
W. J. Knight, Hartland.
C. E. Pawling, Hartland.
J. P. Peterson, Hartland.
E. Mueller, Hartland.
Aug. Oradler, Hartland.
W. F. Wittenberg, Hartland.
H. M. Duvald, Hartland.
Fred Winter, Hartland.
Melion Brown, Hartland.
G. W. Scrantus, Hartland.
C. H. Wittenberg, Hartland.
Peter Hanson, Hartland.
Hans Jacobsen, Hartland.
Gotfried Monk, Hartland.
Hans Orden, Hartland.
Adolph Schimanski, Hartland.
Nels Peterson, Hartland.
M. J. Dauveau, Hartland.
Wm. Ludwigsen, Hartland.
C. N. Nourse, Hartland.
A. B. Chamberlin, Hartland.
Dr. J. N. Onesbaugh, Hartland.
H. G. Nixon, Hartland.
F. Wolkman, Hartland.
F. Hanson, Hartland.
The Van Brunt Manufacturing Company, Horicon.
H. L. McNamara, Janesville.
W. T. Sherer, Janesville.
Badger Coal Company, Janesville.
J. F. Mackness, Kilbourn.
H. D. Corning, Kilbourn.
D. McManman & Sons, Kilbourn.
W. W. Cargill, La Crosse.
C. S. Van Auken, La Crosse.
Geo. H. Gordon, La Crosse.
Geo. H. Ray, La Crosse.
S. Y. Hyde Elevator Company, La Crosse.
W. W. Ellsworth, Lone Rock.
J. W. Puffer, Lyndon.
J. W. Groves, mayor, Madison.
Alex. Gill & Co., Madison.
Stark, Lewis & Co., Madison.
Brittenbach Brothers, Madison.
Welton & O'Neil, Madison.
The Stark-Lewis Land Company, Madison.
American Hardwood Lumber Company, Madison.
E. C. Smith, Markesan.
S. C. Plummer, Mauston.
F. S. Veeder, Mauston.
Menasha Wooden Ware Company, Menasha.
A. H. Stange Company, Merrill.
Merrill Lumber Company, Merrill.
H. W. Wright Lumber Company, Merrill.
Lindauer Pulp and Manufacturing Company, Merrill.
Lincoln County Bank, Merrill.
R. D. Marshall, Merton.
J. McCarthy, Milwaukee.
Wm. Mullin, Milwaukee.
C. G. Deewies, Milwaukee.
H. Aug. Luedke, Milwaukee.
J. H. Marschalek, Milwaukee.
P. A. Van Beck, Milwaukee.
Chas. Schmidt, Milwaukee.
Ed. Hoge, Milwaukee.
E. A. Strako, Milwaukee.
Arth. Wehhecht, Milwaukee.
R. W. Wilder, Milwaukee.
A. F. Hadern, Milwaukee.
C. M. Otto, Milwaukee.
G. H. Daniell, Milwaukee.
Jacob Apepelle, Milwaukee.
Frank Goetsh, Milwaukee.
Charles F. Beindieke, Milwaukee.
Eugene D. Sheeham, Milwaukee.
Jacob Bumer, Milwaukee.
E. Keeson, Milwaukee.
Otto Heidemann, Milwaukee.
A. J. Neary, Milwaukee.
Frank Siak, Milwaukee.
A. H. Smith, Milwaukee.
Charles B. Connley, Milwaukee.
J. W. Uppon, Milwaukee.
W. E. Schroeder, Milwaukee.
S. M. Kerr, Milwaukee.
William Standezel, Milwaukee.
Thomas Doyle, Milwaukee.
Lindsay Bros., Milwaukee.
The National Enameling and Stamping Company, Milwaukee.
A. Geo. Schultz Company, Milwaukee.
The Thomas Furnace Company, Milwaukee.
Milwaukee Coke and Gas Company, Milwaukee.
Vera Chemical Company, Milwaukee.
B. H. Bigham, Milwaukee.
Newport Mining Company, Milwaukee.
Dunn Iron Mining Company, Milwaukee.
Kanawha Fuel Company, Milwaukee.
Manville Company, Milwaukee.
Plankinton Packing Company, Milwaukee.
The Hoisting and Conveying Machinery Company, Milwaukee.
Wisconsin Retail Hardware Association, Milwaukee.
Kimberly Clark Company, Milwaukee.
Mifflin & Linden Mining Company, Mineral Point.
Franklin Mining Company, Mineral Point.
J. J. O'Neill, Monches.
T. J. Manning, Monches.

John Ward, Monches.
Mike Ward, Monches.
William Schoock, Monches.
Thomas Kinealy, Monches.
M. Shields, Monches.
Thomas Shinneas, Monches.
John Bury, Monches.
Lawrence M. Kelly, Monches.
Ed. Ward, Monches.
James Ward, jr., Monches.
Jerry Ward, Monches.
James C. Ward, Monches.
Chas. H. Keelmer, Monroe.
Hoesly & Grennell, Monroe.
Kaslen & Strinner, Monticello.
Bontly Brothers, Monticello.
Louis Dessert, Mosinee.
E. Krause, Nashatah.
Wm. Houchman, Nashatah.
Wm. Thompson, Nashatah.
W. H. H. Cash, New Lisbon.
W. B. H. Kerr Co., North Lake.
Edw. Griebling, North Lake.
R. J. Dempsey, North Lake.
Peoter Wiffenbach, North Lake.
Timothy Murphy, North Lake.
John Carny, North Lake.
Ingle Peterson, North Lake.
G. H. Phladaas, North Lake.
John Lund, North Lake.
James Kelly, North Lake.
E. McNulty, North Lake.
Fred Funk, North Lake.
Nick Shodson, North Lake.
J. E. Roberts, North Lake.
Walter Kerr, North Lake.
Robert McMelhan, North Lake.
Chas. J. Adams, North Lake.
Chas. Johnson, North Lake.
Christ Laffey, North Lake.
W. A. Kennaly, North Lake.
Frank Kenney, North Lake.
A. H. Teskee, North Lake.
A. A. Fuller, North Lake.
Fred Kerr, North Lake.
A. J. Grosnick, North Lake.
Fred B. Brown, Oconomowoc.
W. G. Race, Oconomowoc.
A. B. Rogan, Oconomowoc.
M. L. Doyle, Oconomowoc.
H. G. Schroeder, Oconomowoc.
F. Paul Stone, Oconomowoc.
Bemmis-Hooper-Hays Co., Oshkosh.
The National Bank of Oshkosh, Oshkosh.
The Diamond Match Company, Oshkosh.
A. Streich & Bro. Co., Oshkosh.
Martin Goza, Palmyra.
Christian Carlin, Palmyra.
J. E. Gregory, Palmyra.
John N. Goza, Palmyra.
A. M. Graves, Palmyra.
Geo. A. Cairneross, Pewaukee.
A. Nelson, Pewaukee.
Standard Calendar Company, Platteville.
L. A. Fisher, Platteville.
W. R. Owen, Randolph.
H. B. Allen, Richland Center.
M. L. James, Richland Center.
Barnett & Anderson, Ripon.
Ripon Produce Company, Ripon.
L. Lynch, Ripon.
Boughton & Germain, Ripon.
Rubicon Malting and Grain Company, Rubicon.
Rubicon Mercantile and Grain Company, Rubicon.
E. W. Evans, Springgreen.
George W. Langley, Starlake.
Bradley Company, Tomahawk.
Tomahawk Pulp and Paper Company, Tomahawk.
John Oelhafen, Tomahawk.
Roach, Seeber & Co., Waterloo.
C. Failinger, Waterloo.
J. A. Clark, Waterloo.
Matt Voelker, Waterloo.
R. A. McCracker, Waterloo.
Gus Fox, Waterloo.
A. J. Frame, Waukesha.
H. M. Frame, Waukesha.
Otto Schafer, Waukesha.
O. S. Vaughn, Waukesha.
Wm. Blutz, Waukesha.
W. H. Mylrea, Wausau.
A. Kickbusch, Wausau.
M. H. Duncan, Wausau.
James Montgomery, Wausau.
G. D. Jones, Wausau.
D. J. Murry, Wausau.
Barker & Stewart Lumber Company, Wausau.
H. E. McEachron Company, Wausau.
A. A. Bock, Wausau.
Jacob Mortenson Lumber Company, Wausau.
D. J. Murry Manufacturing Company, Wausau.
Salsich & Wilson (no town given).
Otto H. Falk (no town given).
Paine Lumber Company (no town given).
James Montgomery (no town given).
G. D. Jones (no town given).
George W. Langley (no town given).
Fox Brothers (no town given).

List of fruit growers and shippers protesting against the passage of the so-called "private car discrimination bill."

C. H. Mathis, Blackville, S. C.
J. T. Creigh, Round Oak, Ga.
H. A. Mathews, Fort Valley, Ga.
G. R. Blinster, Fort Valley, Ga.
Phil Ogletree, Zenith, Ga.
Geo. B. Lewett, general manager Elberta Peach Company, Macon, Ga.
I. D. Fagon and Robert Flournoy, Fort Valley, Ga.

Additional list of shippers, individuals, and organizations favoring the enactment of legislation conferring additional powers upon the Interstate Commerce Commission to regulate railway rates.

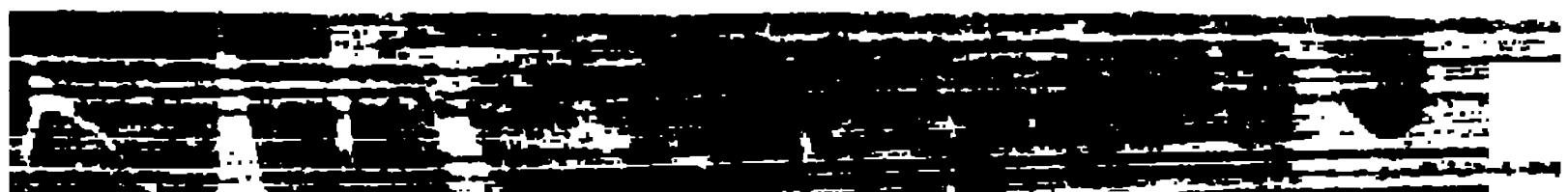
The list of which this is a supplement will be found at page 479 et seq., Vol. I, of these hearings.

John Pheifer, president South Side Business and Improvement Association, of Columbus, Ohio.
A. B. C. Hardy, secretary Waterloo Carriage Company, Waterloo, Iowa.
M. H. Daley, manufacturer of disks, lever harrows, and barrel carts. Charles City, Iowa.
A. O. Tabor, manager Waterloo Automatic Stone Machine Company, Waterloo, Iowa.
Alex. S. Williams, treasurer Astoria Veneer Mills, Long Island, N. Y.
United Lumber Company, Albia, Iowa.
J. B. Queensbury, Forest Depot, Va.
W. S. Delano, Lincoln, Nebr.
Eugent Withers, counselor at law, Danville, Va.

Statement of receipts, disbursements, etc., of the Baltimore and Ohio Railroad system, exclusive of subsidiary lines, for the year ended June 30, 1904.

(This should have appeared as a part of Mr. Hugh L. Bond's statement, found on p. 1377, but was received too late for insertion.)

Gross receipts from operation		[illegible]
Operating expenses		[illegible]
Net earnings from operation		21,442,217.10
Other income		2,648,597.41
Gross income		24,090,814.51
Deductions from income:		
Taxes	$1,305,510.32	
Interest and rentals	9,627,851.19	
Other deductions	800,092.77	
		11,733,454.28
Net income		12,357,360.23
Expenditures in the way of dividends		7,370,482.40
Net income after payment of dividends		4,986,877.83



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LIST OF WITNESSES.

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ACWORTH, M. P., RIGHT HON. WILLIAM M., barrister at law, London, England, delegate to International Railway Congress, Washington, D. C. May 9, 1905 1843–1870

ADAMS, BROOKS, Quincy, Mass., representing the Chamber of Commerce of Spokane, Wash. May 18, 1905 2913–2941

AIKEN, A. M., Danville, Va., representing the city of Danville. May 8, 1905 ..... 1816–[illegible]

ATTORNEY-GENERAL: Opinion. May 6, 1905 1662–1674

BACON, DON H., president of the Tennessee Coal and Iron Railroad Company, of Birmingham, Ala. May 18, 1905 2941–2942

BACON, EDWARD P., Milwaukee, Wis., chairman executive committee Interstate Commerce Law Convention, St. Louis, October 28–29, 1904, representing producers, shippers, and consumers:
December 16, 1904 5–29
May 8, 1905 1764–1811
May 9, 1905 1891–1924
May 17, 1905 2633–2679
May 18, 1905 2962–2965

BAKER, GEORGE L., Columbia, S. C., manufacturing ice and selling coal. May 17, 1905 2744–2745

BARBER, CLARENCE, lawyer, representing the Commercial Club of Knoxville, Tenn. May 8, 1905 1840–1841

BARRET, J. A., Van Buren, Ark., secretary of the Van Buren Horticultural Association. May 16, 1905 2501–2503

BARTLES, JOSEPH, St. Paul., illuminating and burning oil business. May 17, 1905 2740–2743

BAYLOR, J. B., Milford, Va., representing the landowners of Virginia. May 22, 1905 3324–3325

BEAN, IRVING M., Milwaukee, president Northwestern Iron Co. May 8, 1905 1823–1827

BIDDLE, W. B., Chicago, third vice-president of the Chicago, Rock Island Pacific Railway. May 5, 1905 1650–1661

BIRD, A. C., Chicago, vice-president of the Gould system:
May 12, 1905 2227
May 13, 1905 2249–2303

BLODGETT, FRANK G., Janesville, Wis., engaged in the milling of grain and flour. May 5, 1905 1639–1644

BOATWRIGHT, W. P., Danville, Va., furniture manufacturer. May 10, 1905 2006–2008

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BOND, HUGH L., Baltimore, Md., second vice-president and general attorney Baltimore and Ohio Railroad Company:
May 1, 1905 1377–1389
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CALL, JOSEPH H., attorney at law, Los Angeles, representing citrus-fruit interests in southern California. May 17, 1905 2684–2725

CARLE, L. B., Janesville, Wis., tobacco shipper and president of Janesville Machine Co. May 12, 1905 2177–2185

CARLETON, MURRAY, St. Louis, wholesale dry goods business, representing Business Men's League and others. May 16, 1905 2515–2524

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COOPER, J. W., St. Paul, manufacturer of food products and wholesale grocer. May 12, 1905 2162–2168

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FULLER, H. R., Beaver Falls, Pa., railroad conductor, representing the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen, the Brotherhood of Railway Conductors, and the Brotherhood of Railway Trainmen. May 20, 1905 3141–3207

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GARRISON, OLIVER S., St. Louis, Mo., president Big Muddy Coal and Iron Co.; chairman Illinois Coal Operatives' Association.
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GARVIN, H. C., Winona, Minn., secretary and manager of the Bay State Milling Company. May 4, 1905 1546–1550

GARY, E. H., New York City, president of the board of directors and a member of the finance committee of the United States Steel Corporation. May 19, 1905 3074–3085

GATES, ROBERT, of Tennessee, representing the industrial immigration department of the Louisville and Nashville Railroad. May 19, 1905 2979–2987

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GROTE, WILLIAM, Elgin, Ill., representing the Seaboard Reed Pipe Organ Company as president; the Stover Piano Company, as vice president, and the Elgin Lumber Company, as secretary. May 4, 1905. 1543–1545

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HEARNE, F. J., chairman and president of the Colorado Fuel and Iron Co. of Colorado. May 19, 1905 3069–3074

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LESLIE, ROBERT M., Philadelphia, Pa., manufacturer and dealer Portland cement. May 19, 1905..... [illegible]

LINCOLN, JAMES C., St. Louis, Mo., general freight agent of the Missouri Pacific Railway, the St. Louis, Iron Mountain and Southern Railway, and several allied, leased, and operated lines embraced in what is known as the Missouri Pacific Railway System:
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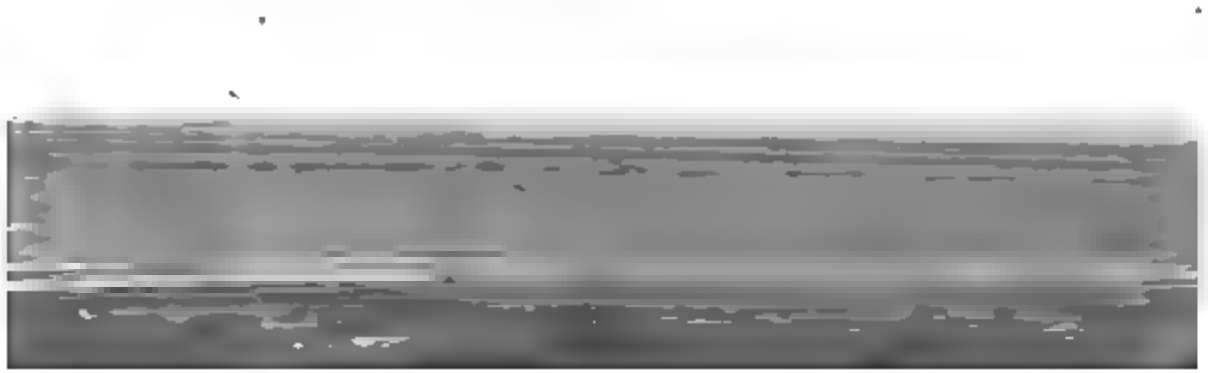

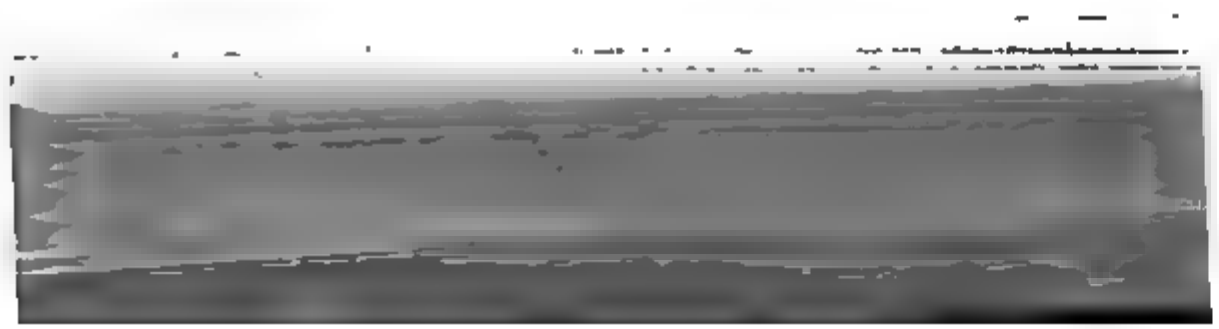

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